

A
R E V I E W
O F T H E
Statutes,

B O T H
Ancient and Modern ;

Especially concerning the Practick Part of the
LAW, Alphabetically digested; with proper CASES
and RESOLUTIONS upon the said STATUTES:
Referring to most of the Reports extant.

With an Exact TABLE to the Whole.

And also a Compleat TABLE; shewing in what Statutes
Justices of the Peace are concerned: Whether One or
more; with Those also relating to the Quarter-Sessions, &c.
which may readily be found out by the Alphabetical Ta-
bles to the Abridgments of the Statutes.

The Second Edition.

To which is added,

An APPENDIX, continuing the REVIEW
of the STATUTES, from the first Publishing of this
Book compleat down to the Death of Queen ANNE:
With an Abstract of the late Act of Parliament for the
more effectual Punishing of Vagrants, &c. which reduces
all the Acts on that Head into one: And Marginal Heads
for the more ready turning to any Part wanted. With
Abstracts of the Acts relating to Elections.

By Giles Jacob, Gent.

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REVIEWS

OF THE

STATISTICS

OF THE



THE
STATISTICS
OF THE
BRITISH
MUSEUM
AND
THE
MUSEUM
OF
NATURAL
HISTORY
AND
THE
MUSEUM
OF
MAN

BY
GEO. J. G. G.

THE
STATISTICS
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A COMPLEAT TABLE,

Shewing in what Statutes Justices of the Peace are concerned ; Whether One or more ; with those also relating to the Quarter-Sessions, &c. Which may readily be found out by the Alphabetical Tables to the Abridgments of the Statutes.

One or more Justices.

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 Alehouses. See *Excise*.
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 Apprentice.
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 Buttons.
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A 2

C. Car

A Compleat T A B L E, &c.

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A Compleat T A B L E, &c.

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A Compleat T A B L E, &c.

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Fishing in *Severn.*

Destroying Spawn of Fish.

Swearing Commissioners of Sewers.

Keeping above 2000 Sheep.

Sheriffs, &c. acting against 29 *H. 6. c. 10.*

Justices to controul Sheriffs Estreats, 11 *H. 7. c. 15.*

Not returning Jurors.

Intermedling by Bailiffs, &c. before sworn, 27 *El. c. 12.*

Transporting Sheep beyond Sea.

Preaching to forbear eating Flesh.

Eating Flesh on *Fridays.*

Silk-Thrower not served 7 Years.

Presentment for planting Tobacco, &c.

Foreign Corn imported, and prized, 1 *Jac. 2. c. 19.*

Erecting Houses of Correction.

Governors of such Houses to account, 7 *Jac. 1. c. 4.*

Wandering Soldiers, &c. 39 *Eliz. c. 17.*

Vagabond Rogues.

But-

A Compleat T A B L E, &c.

Butchers, Brewers, &c. conspiring, &c.
 Clause in Commission of Peace, 5 H. 4. c. 3.
 King's Purveyors by wrong Measure.
 Wine Vessels, of what Measure.
 Common Balance in Cities, &c.
 Common Bushel there.
 Measures and Weights of Brasses.
 Measures Sealing.
 Wild Fowl destroying.
 Pressing Wooll-packs with Screws.
 Exporting Tobacco-pipe Clay.
 Conveying away Packs of Wooll, &c. 13 & 14 Car. 2. c. 18.
 Statute of Measures for Ale, &c. to be given in Charge, 11 & 12 W. 3. c. 15.
 Making Spirits *contr'* 10 & 11 W. 3. c. 4.
 Levying Money for repairing Gaols.
 Toll of the Hay-market, 8 & 9 W. 3. c. 17.
 Rates for repairing Highways, 3 & 4 W. & M. c. 12.
 Taking Constables Returns of Jurors, 7 & 8 W. 3. c. 32.

Repairing Highways in *Middlesex*.
 Costs awarded upon an Appeal of Settlement, 8 & 9 W. 3. c. 30.
 Disturbing dissenting Preachers.
 Appeals against Orders to remove poor Persons, 8 & 9 W. 3. c. 30.
 Assessments for Repairs of Bridges, 1 Ann. Sess. 1. c. 10.
 Constables Neglect in collecting, *ibid.*
 Treasurer's Default, *ibid.*
 Rates for conveying Vagrants, *ead.* c. 13.
 Warrants issuing to High-Constables for List of Jurors, 3 & 4 A. c. 18.
 High-Constables Neglect therein, *ibid.*
 Petty-Constable's Neglect, *ibid.*
 Raising Money for passing Vagrants, 5 Ann. c. 32.
 To order how many Horses, &c. to draw Carriages, 6 Ann. c. 29.
 To determine Appeal of Bakers, 8 Ann. c. 18.
 Costs upon Appeals concerning Cloth-Buttons, 8 Ann. c. 6.

A R E-



**A
R E V I E W**

Of all the

Statutes,

B O T H

Ancient and Modern, &c.

Abatement.

BY the Statute 1 Ed. 6. Cap. 7. Sect. 3.
It was enacted, That if any Person
shall be made or created Duke,
Archbishop, Marquess, Earl, Vis-
count, Baron, Bishop, Knight, Justice of
the one Bench or the other, or Serjeant at
Law, depending any Action, Bill or Suit;
yet no Writ, Action or Suit, shall there-
fore be abateable or abated, but remain in
Force.

Creations of
Honours shall
not abate
Writs.

B

Now

A Review of all the Statutes;

Yet a meer
Baronet is not
within the
Statute.

Now though the Writ shall not abate where the Plaintiff is so made a Knight (all Knights being within this Statute); yet it was held, That a Baronet is not, unless he be a Knight also. *Vid. Siderfin* 40.

That the
Death of ei-
ther Party
shall not abate
the Writ.

Note, That before the Statute of 8 & 9 *W. 3. cap. 10.* the Death of a Plaintiff did in all Cases abate the Writ before Judgment; but by the said Statute, neither the Death of the Plaintiff or Defendant shall abate it. [*Which see after in Title Amendment.*]

A dilatory
Plea is cau-
tiously recei-
ved.

Also by 4 & 5 *Annæ*, for Amendment of the Law; no dilatory Plea shall be received in any Court of Record, unless the Party offering the same doth prove the Truth thereof by *Affidavit*, or shew some probable Matter to the Court to induce them to believe that the Fact of such dilatory Plea is true.

Name of *Earl*.

Note, That the Name of an *Earl*, if omitted in the Writ, shall abate the Writ. *Davis's Rep.* 60. *a. Vide postea* Additions.

No Abate-
ment in Par-
tition.

By Statute 8 & 9 *W. 3. cap. 31.* No Plea in Abatement shall be admitted in any Suit for Partition; nor shall the same abate by reason of the Death of any Tenant. [*See after in Title Amendment, relating to Partitions.*]



Ability,

Ability, and Non-ability.

A *Rtuli Cleri, c. 13. Anno 9 Ed. 2.* The Examination of a Person presented to a Benefice, belongeth to the Ecclesiastical Judge. Examination upon Presentment.

By an Act made 7 *Annæ*, to preserve the Rights of Patrons to Advowsons, 'tis enacted, That no Usurpation upon any Avoidance in any Church, &c. shall displace the Interest of any Person intitled to the Advowson or Patronage thereof; but he who had a Right, if no Usurpation had been, may present or maintain his *Quare Impedit*, notwithstanding such Usurpation. Ability of Presenting to Advowsons, notwithstanding an Usurpation.

And if Coparceners, &c. be seised of an Estate of Inheritance in the Advowson of any Church, &c. and a Partition is made to present by Turns, then every one shall be taken to be seised of his separate Part of the Advowson to present in his Turn: And if there be two, each shall be seised, one of one Moiety to present in the first Turn, the other in the second; and so if three, four, or more. Ability of Coparceners to present by Turns.

[See after *Tit. Advowson, and Amendment, relating to Partition between Coheirs, &c.*]

By Statute 10 & 11 *W. 3. cap. 16.* for enabling Posthumous Children to take Estates, as if born in their Fathers Life-time; it is enacted, That where any Estate is, or shall by any Marriage, or other Settlement, be limited in Remainder, to or to the Use of the first or other Son or Sons of the Body of any Person lawfully begotten, with any To enable Posthumous Children to take Estates, as if born in their Fathers Life-time.

A Review of all the Statutes,

Remainders over, to or to the Use of any other Persons, or in Remainder to or to the Use of a Daughter or Daughters lawfully begotten, with Remainders over; Any Sons or Daughters of such Persons lawfully begotten, or to be begotten, as shall be born after their Fathers Decease, may, by Vertue of such Settlement, take such Estate so limited, to the first or other Sons, or to the Daughter or Daughters, in the same Manner as if born in the Life-time of their Father; although there should be no Estate limited to Trustees, after the Decease of the Father, to preserve the contingent Remainder to such after-born Children, until they come *in Esse*, or are born to take the same.

Not to divest
Estates in
Remainder
come to Possession, &c.

But that this Act shall not extend to divest any Estate in Remainder, that by Vertue of any Marriage, or other Settlement, is already come to the Possession of any Person, or to whom any Right is accrued, tho' not in actual Possession, by Means of any after-born Children, not born in the Life-time of their Father.

For the King's
natural-born
Subjects to
inherit Lands,
&c.

By 11 & 12 W. 3. cap. 6. All Persons being the King's natural-born Subjects, within any of his Realms or Dominions, may inherit as Heirs to any Manors, Lands, Tenements or Hereditaments, and make their Pedegrees and Titles, by Descent, from any of their Ancestors, lineal or collateral; although the Father or Mother, or both, or any other Ancestors of such Persons so deriving their Title or Pedegree, were born out of the King's Allegiance, and out of his Realms and Dominions, as fully as if such Fathers

both Ancient and Modern, &c.

S

Fathers and Mothers, &c. had been naturalized, or natural-born Subjects.

Note, An Act was made *Anno 7 Anne Regine*, for Inviting Protestant Strangers into *England*, &c. called, *An Act for Naturalizing Foreign Protestants*: But that Act is repealed by another Act made *Anno 10 Anne*, except so much thereof by which the Children of all natural-born Subjects, born out of the Allegiance of Her Majesty, &c. are to be deemed natural-born Subjects of this Realm; but yet such Repeal not to prejudice any Persons who had or should be naturalized before the 4th of *Febr. 1711*.

Note, That in *Anno 7 Anne*, All Infants who are seised or possessed of Estates in Fee or Trust, or by way of Mortgage, are enabled to make Conveyances of such Estates; or else may be compelled thereto by Order of the Court of *Chancery*, or Court of *Exchequer*, upon Petition, and hearing the Parties concern'd.

Infant Trustees enabled to make Conveyances, &c.

Note, There is a late Act made 6 *Anna*, cap. 18. For them in Remainder, Reversion or Expectancy of any Estate whatsoever, after the Death of any other Person; and that they have Cause to believe that such other Person is dead, and such Death concealed by the Guardian, Trustee, &c. to cause such Guardian, Trustee, &c. to produce the Person suspected to be concealed, &c. [See the Act.]

To cause Guardians, &c. to produce Persons suspected to be dead, &c.

[See this after more largely at Title Death.]

B 3

By

A Review of all the Statutes,

By Statute 16, 17 Car. 17. An Act for disabling all Persons in holy Orders to exercise any Temporal Jurisdiction or Authority: Repealed, 13 Car. 2. cap. 2.

Accepting and protesting of Bills of Exchange.

Of accepting, &c. Bills of Exchange, &c.

BY 9 & 10 W. 3. cap. 17. All Inland Bills of Exchange after Acceptance, and Refusal or Neglect to pay, may within three Days be protested, and within fourteen Days after notified to the Party from whom they were received, he is to pay the said Bills, with Interest and Charges from the Protesting.

[See after concerning Promissory Notes, &c.]

Accounts.

How Servants and Bailiffs of Lords shall account, &c.

BY Statute of *Marlebridge*, cap. 23. 52 H. 3. Bailiffs of Lords, who withdraw themselves from Accounting, and have not whereof to be distrained, shall be attached by the Sheriff, and made to account.

By Statute of *West.* 2. cap. 11. 13 E. 1. Servants, Bailiffs, or other Accountants, that are found in Arrearages by Auditors assigned by their Masters, upon the Testimony of the same Auditors, shall be committed to the next Gaol, and there remain in Iron under safe Custody at their own Costs, until they shall have satisfied their Masters.

Here,

both Ancient and Modern, &c.

7

Here, if the Accountant find himself ag-
grieved by the Auditors, he may appeal to
the Barons of the *Exchequer*, and then the
Sheriff shall give Notice to his Master to
attend the Barons at a certain Day with the
Account; where the Barons, or Auditors
by them assigned, shall rehearse the Ac-
count, and do Justice therein: But if then
also the Accountant shall be found in arrear,
he shall be committed to the *Fleet*.

Accountant
may appeal.

If he fly, or will not account, a *Distringas*
shall issue out against him, to cause him to
appear before the Justices to account; and
upon Appearance, Auditors shall be assigned
him; by whom if he be found in Arrear,
and not able to pay, he shall be committed
to the Gaol, as aforesaid. But if he fly, and
the Sheriff return thereupon *Non est inventus*,
after *Exigent*, he shall be outlawed; and then
being taken, he shall not be repleviable with-
out the Master's Consent, in Pain that the
Sheriff, Gaoler, &c. who doth so bail him,
(being thereupon convict) shall answer the
Master his Damages; and if an inferiour
Officer, who so doth, be not responsible,
Respondeat superior.

Distringas
granted, Au-
ditors to be
assigned, &c.

[See after the late Act for the Amendment of
the Law, how Account may be brought against
Executors and Guardians, &c.]

And see the whole Doctrine and Pleadings of
Account in Mr. D'Anvers's General Abridg-
ment, *Tit. Account*.]

Action Popular, &c.

Recovery by
Covin.

1. **R**ecovery in an Action Popular by Covin, shall be no Bar in an Action sued for the same Thing *bonâ fide*. 4 Hen. 7. cap. 20.

Imprison-
ment.

2. Here the Defendant attainted of Collusion shall suffer two Years Imprisonment, to be prosecuted within one Year.

Release.

3. No Release of a common Person shall in this Case discharge an Action Popular.

Averment.

4. Yet no Collusion is in this Case averable, where the Point of the same Action, or the Collusion it self, hath been tried by Verdict.

Informers
restrained.

5. Informers heretofore restrained by Order of any Court, shall not pursue Actions Popular. 31 Eliz. cap. 5.

Laying the
Action limi-
ted.

6. In Popular Actions the Offence shall be laid to be done in the County where indeed it was done; otherwise if the Defendant traverse and disprove that Point, the Plaintiff shall be barr'd.

Officers not
restrained to
lay the Action
in the same
County.

7. This Act doth not restrain Officers, which have lawfully used to exhibit Informations, nor Actions brought for Champerty, buying of Titles, Extortion, Offences against the Statute of 1 Eliz. c. 11. (concerning the right Landing of Merchandizes, and Custom of sweet Wines) concealing of Customs, &c. corrupt Usury, Forestalling, Regrating or Ingrossing, when the Penalty shall amount to 20 l. or above: For in all these

Penalty a-
bove 20 l.

both Ancient and Modern, &c.

9

these Cases the Offence may be laid in any County.

8. Popular Actions, where the King only hath the Forfeiture, shall be commenced within two Years; where he hath only a Part, and the Informer the rest, within one Year. But this is to be understood, where a shorter Time is not limited by any Statute.

Time of commencing the Action.

9. All Suits for using unlawful Games, or any Art or Mystery, without being brought up in it, and for not having Bows and Arrows according to the Statute, shall be prosecuted at the Assizes or Sessions of the County, or at the Leet within which the Offence was committed, and not elsewhere.

Suits limited, where to be prosecuted.

10. Actions Popular which may be presented before Justices of Assize, *Nisi-prins*, G. D. Oyer and Terminer, or of P. shall be prosecuted only in the Counties where the Offences were committed, except for Recusancy, Maintenance, Champerty, Buying of Titles, Concealing of Customs, &c. or transporting of Gold, Silver, Munition, Wooll, Woolfels, or Leather. 21 Jac. 1. cap. 4.

Actions Popular limited to a certain Place.

11. Upon Default of proving that the Offence was committed in the same County, the Defendant shall be found Not guilty.

Default of Proof.

12. The Informer shall make Oath, that the Offence was committed in the same County where the Action is laid, and within one Year before the Suit commenced.

Informer's Oath thereof.

13. The Defendant, in a Popular Action, may plead the General Issue, and yet give special Matter in Evidence.

Defendant's Plea.

14. An

How an Informer shall prosecute.

14. An *Informer* shall exhibit his Suit in proper Person, and pursue it by himself, or by his Attorney in Court, and that by way of Information, or Original Action, and shall have no Deputy; and all this in Pain of ten Pounds, and the Pillory. 18 *Eliz.* cap. 5.

A Note of the Time when.

15. A Note of the Time of exhibiting the Information shall be truly taken, and from thenceforth it shall be accounted to be of Record, before which Time no Process shall issue out upon it.

Informer's Name, &c.

16. The Clerk that makes out the Process, shall indorse the Informer's Name, and also the Statute upon which the Information is grounded, in Pain of 40 s.

Appearance of the Jury limited.

17. No Jury shall appear at *Westminster* for a Trial upon any Penal Law, when the Offence was committed above thirty Miles from *Westminster*, except the Attorney General for some reasonable Cause require the same.

Composition.

18. No Informer shall compound with any Defendant before Answer, nor then, but by Consent of Court, in Pain of 10 l. and the Pillory. [See after.]

Costs against the Informer.

19. Where the Informer delays, or discontinues his Suit, or otherwise is nonsuit or overthrown, the Court shall assign Costs to the Defendant to be immediately levied by Execution issuing out of the same Court. [See after.]

Offences determined.

20. Justices of Oyer and Terminer, Assize and Peace, in their Sessions have Power to hear and determine these Offences.

both Ancient and Modern, &c.

111

21. This Act shall not restrain Actions brought for Maintenance, Champerty, Buying of Titles, or Imbracery; nor any certain Person, or Body-Politick, to whom any Forfeiture or Penalty is specially limited; nor certain Officers, who have lawfully used to exhibit Informations.

Actions and Officers not restrain'd.

How Defendant may appear by Attorney without Bail.

By Statute 29 Eliz. 5. *in fine*. If any shall be sued upon any Penal Law in the King's-Bench, Common-Pleas or Exchequer, where such Person isailable by Law, or may appear by Attorney, the Person so sued shall at the Day contained in the first Process, appear by Attorney to defend the same, and shall not be urged to Personal Appearance, or to put in Bail to answer the same.

By Statute 31 Eliz. 10. the said Clause of 29 Eliz. 5. shall only extend to natural-born Subjects, or free Denizens, and none others.

By Statute 13 & 14 Car. 2. cap. 11. concerning Customs, it is enacted, That no Informer or Seizer shall compound under One Third of the appraised Value, upon Loss of his Office.

Informers compound-ing.

Judicial

Judicial Proceedings concerning Informers,
and Outlawed Persons.

Informer to give Recognizance before Process issue, to prosecute with effect.

A Memorandum to be filed.

Costs to the Defendant for Defect in Prosecution.

Unless, &c.

The Statute 4 & 5 W. & M. cap. 18. relates to the Clerk of the Crown, or Justice of Peace of the Place where the Cause of any Information shall arise, taking Recognizances of Informers before Process issued out, to be entred to the Person prosecuted, in Penalty of 20 *l.* to prosecute with Effect, and abide by such Order as the Court shall direct: And the Clerk of the Crown shall enter the same upon Record, and file a *Memorandum* thereof in some publick Place in his Office, that all Persons may resort thereunto without Fee.

And if the Persons against whom such Informations shall be exhibited, appear and plead to Issue, and that the Prosecutor shall not at his own Charge, within a Year after Issue joined, proceed to Trial; or if upon such Trial a Verdict pass for the Defendant, or the Informer procure a *Noli prosequi* to be entred, the Court shall award the Defendant Costs; unless the Judge, before whom it shall be tried, shall at the Trial in open Court certify upon Record, that there was a reasonable Cause for such Information: And in case the Costs be not paid within three Months after they are taxed, the Defendant shall have the Benefit of the said Recognizance to compel the Payment thereof.

[See after for Costs in Tit. Amendments.]

This

This Act shall not extend to Informations in the Name of his Majesty's Coroner, or Attorney, commonly called the Master of the *Crown-Office*. This Act not to extend to her Majesty's Coroner.

Also upon the Demise of any King or Queen of this Realm, all Pleas to Informations shall stand, without calling the Defendant to plead anew; unless the Defendant request the Court for that Purpose within five Months after such Demise. Upon a Demise of the King, Pleas to stand.

The Statute 4 & 5 *W. & M. cap. 22.* relates to the Benefit of Lords of Manors, inrolling their Grants by Charter, or other good Conveyances; and having the same allowed by the Court of *King's-Bench*, who then shall not be compelled to plead the same to any Inquisition return'd by any Coroner: And if such Grants be for Felons Goods, *Deodands*, and other Forfeitures, he need but inroll Part thereof. [See the Act.] Inrolment of Grants made to Lords of Manors.

That upon issuing of any *Exigent* for any criminal Matter, within this Act, before such Conviction, there shall issue a Writ of Proclamation, according to the Form of the Statute made *Anno 31 Eliz.* which Writ shall be delivered to the Sheriff three Months before the Return thereof. Exigent and Proclamation upon criminal Matters.

Note, By the aforesaid Statute 4 & 5 *W. & M. cap. 18.* no Persons who shall be outlawed in the Court of *King's-Bench* for any Thing (except Treason or Felony) shall be compelled to appear in Person to reverse the same; but may appear by Attorney, and reverse the same without Bail, except where special Bail shall be ordered by the Court. When and how outlawed Persons may appear by Attorney.

And

Unless special Bail be required, the Sheriff may take an Attorney's Engagement to appear.

And if any Person so outlawed be taken upon a *Capias Utlagatum*, the Sheriff who taketh him (in all Cases where special Bail is not required by the said Court) may take an Attorney's Engagement under his Hand to appear for him, and to reverse the Outlawry, and thereupon may discharge the Defendant: And where special Bail is required, the Sheriff may take Security of the Defendant by Bond, with one or more Sureties, in double the Sum for which special Bail is required; and no more for his Appearance at the Return of the Writ, and to do and perform such Things as shall be required by the Court; and after such Bond taken, may discharge him.

Outlawed Person to be discharged upon finding Security.

If any Person so outlawed, and taken upon a *Capias Utlagatum*, shall not be able within the Return of the said Writ to give Security; whensoever such Prisoner shall find Surety for his Appearance by Attorney, at some Return in the Term then next following, to reverse the Outlawry, &c. the Sheriff may discharge him.

Action against a Constable, how.

By 21 *Jac.* 1. *cap.* 12. when an Action is to be brought against a Constable, for a Thing done by him by Vertue of his Office, it must be brought against him in the County where he is Constable, and the Fact was done, and not elsewhere: And he may plead the general Issue, and give the special Matter in Evidence; and if the Plaintiff be nonsuited, or the Defendant be found not guilty, he shall have double Costs.

By

By 5 *Eliz. cap. 9.* an Action lies against a Witness for not appearing to give Evidence, after he is serv'd with Process out of any Court of Record to appear at a Trial, and hath had reasonable Charges tender'd him according to his Calling, &c. the Penalty is 10 *l.* and such further Damage as the Judge shall award.

Action against a Witness.

Also by Statute 3 *Jac. 1. cap. 7.* if an Attorney admits any Person to follow a Suit in his Name, both he and the Person that follows the Suit, forfeit each of them 20 *l.* to be divided between the King, and the Party grieved. [*See after Tit. Attornies*]

Action against Attorney.

Actions Limited.

Note, **BY** 21 *Jac. 1. cap. 16.* all Writs of *Formedon* in Descender, Remainder or Revertor, for any Title or Cause now *in Esse*, shall be sued within 20 Years next after this present Session of Parliament, and for any Title or Cause hereafter accruing within 20 Years after such Title or Cause so accruing: Otherwise, such Title shall be for ever after barred, and the Party claiming utterly excluded from Entry.

As to Writs of *Formedon*.

None now having any Right or Title of Entry into any Manors, Lands, Tenements or Hereditaments, now held from him or them, shall thereinto enter but within 20 Years next after the End of this Sessions of Parliament, or within 20 Years next after any other Title accrued: And none shall at any Time hereafter make any Entry into any

As to Entry into Lands, &c.

any Lands, Tenements or Herediments, but within 20 Years next after his or their Right or Title, which shall hereafter first descend or accrue to the same.

**Actions
saved.**

The Titles of any Infant, Feme Covert, *Non Compos Mentis*, one imprisoned, or beyond Sea, are saved, so as they commence their Suit within 10 Years after such Imperfections removed.

**As to Case,
Trespafs,
Debt, Deti-
nue, &c.**

All Actions upon the Case (other than for Slander), Actions for Accompt (other than such as concern Merchandize), Actions or Trespafs, Debt, Detinue, Trover and Replevin, shall be commenced within three Years after this present Session of Parliament, or within six Years after the Cause of Actions of Suit, and not after.

**Affault and
Battery.**

All Actions or Trespafs, of Assault, Battery, Wounding and Imprisonment, shall be commenced within one Year after this Session, or within four Years after the Cause of Suit, and not after.

Slander.

All Actions upon the Case for Words, shall be commenced within one Year after this present Session, or within two Years after the Words spoken, and not after.

**Where Plain-
tiff may com-
mence a new
Action.**

Provided, That if in any such Actions Judgment be given for the Plaintiff, and the same be reversed by Error, or a Verdict pass for him, and upon Motion in Arrest of Judgment it is given against him, or if the Defendant be outlawed in the Suit, and after reverse the Outlawry: In these Cases, the Plaintiff, his Heirs, Executors or Administrators, may commence a new Action with-
in

in a Year after such Judgment reversed, or given against the Plaintiff, or Outlawry so reversed, and not after.

The Right of Action in the Cases above-said, is saved to an Infant, Feme Covert, *Non Compos Mentis*, a Person imprisoned or beyond Sea; so as they commence their Suits within the Times above limited respectively, after their Imperfections removed.

[See more after Tit. Amendment, concerning the Limitation of Actions.]

Actions saved to Femmes Covert, &c.

By Statute 10 & 11 W. 3. c. 14. for quieting Mens Titles and Possessions under ancient Fines and Recoveries, and ancient Judgments; it is enacted, That no Fine or Common Recovery, nor any Judgment in any Real or Personal Action, shall be reversed for any Error therein, unless the Writ of Error or Suit, for reversing such Fine, Recovery or Judgment, be commenced and prosecuted with Effect within 20 Years after such Fine levied, Recovery suffered, or Judgment signed or entred on Record.

Concerning Writs of Error upon ancient Fines and Recoveries, to be executed within 20 Years.

But Persons intitled to such Writs of Error, being within the Age of 21 Years, or Covert, *Non Compos Mentis*, imprisoned, or beyond the Seas, when such Title accrued; they, their Heirs, Executors or Administrators, (notwithstanding the said 20 Years is expired) may bring their Writ of Error for reversing such Fine, Recovery or Judgment, as they might have done if this Act had not been made; so it be within five Years after their being of full Age, Discoverture, coming of Sound Mind, Enlargement out of

A Saving to Femmes Covert, *Non Compos Mentis*, &c.

A Review of all the Statutes,

of Prison, or Returning from beyond Sea, or Death; but not afterwards, or otherwise.

[See after Tit. Amendments.]

1. As to Prosecuting of Actions upon Entries and Claims to avoid Fines, in what Time.
2. As to Suits in the Admiralty for Seamen's Wages.
3. As to Saving of Actions to Persons beyond the Sea, &c.

Addition. Vid. Abatement.

Additions
necessary.

1. Statute 1 H. 5. c. 5. In Original Writs, where *Exigent* shall be awarded, Additions of the Defendant's Condition and Dwelling shall be inserted.

2. Outlawries otherwise prosecuted shall be void.

3. Surplusage of Additions shall not prejudice, albeit the Writ do therein vary from the Records and Deeds.

Chancery.

4. The Clerks of the Chancery shall not omit such Additions, in Pain to be fined at the Discretion of the Chancellor.

[See for the Pleadings and Reports relating to this Head in General Abridgment, Tit. Additions.]

Adjournment of the Court, &c.

BY Statute 2 E. 3. cap. 11. the Common Bench shall not be removed without Warning by Adjournment.

[See this Head in the Gen. Abr. fol. 243, &c.]

Admea

Admeasurement of Dower.

BY Statute *West. 2. cap. 7. 13 E. 1.* a Guardian shall have a Writ of Admeasurement of Dower; yet the Heir (at full Age) shall not be barred by that Suit, in case it be prosecuted by Collusion.

Admeasurement of Dower, how to be prosecuted.

When it comes to the great Distress, Days shall be given, within which two Counties may be holden, where Proclamation shall be made for the Defendant to come in at the Day contained in the Writ; at which if the Defendant appear, the Plea shall proceed; but if not, upon the Proclamation returned by the Sheriff, and the Defendant's Default, Admeasurement shall be made.

Admeasurement of Pasture.

BY Statute *West. 2. cap. 8. 13 E. 1.* upon a second Over-charge of Pasture, if the Pasture were admeasured before the Justices, the Remedy shall be by Writ judicial, returnable before the Justices under the Seals of the Sheriff and Jurors: And then the Justices shall award Damages to the Plaintiff, and shall estreat into the *Exchequer* the Value of the Beasts (wherewith the Pasture was so overcharged) to be answered to the King.

Admeasurement of Pasture, how to be prosecuted.

If the Admeasurement were made in the County, the Sheriff by a *Chancery* Writ shall enquire of the Surcharge, and Value of the Beasts, and shall answer the same to the King in the *Exchequer*.

A Review of all the Statutes,

To prevent Fraud in the Sheriff, all such Writs *de secunda Superoneratione* shall be enrolled, and also at the Year's End transcribed in the *Exchequer*; and so likewise shall Writs of *Redisseisin*. [See *Tit. Common.*]

Administrators and Executors, &c.

How Executors may sell Lands devised.

BY Statute 21 *Hen. 8. c. 4.* that Part of the Executors which take upon them the Charge of a Will, may sell any Land devised by the Testator to be sold, albeit the other Part which refuse will not join with them.

Who shall be Executor of his own Wrong.

And by 43 *Eliz. c. 8.* if any Person shall obtain any Goods, or Debts of an Estate, or Releases, or other Discharge of any Debt or Duty (which belonged to the Intestate) by Fraud, (as by procuring the Administration to be granted to a Stranger of mean Estate) and not upon valuable Consideration, or in Satisfaction of some just Debt, answerable to the Value of the Goods so obtained: In such Case, such Person shall be chargeable as Executor of his own Wrong, so far as the Value of the Goods, or Debts, so obtained, shall amount unto: Howbeit, he shall also be allowed such reasonable Deduction, as other Executors or Administrators ought to have.

Executors or Administrators wasting the Estate of the Deceased.

By Statute 30 *Car. 2. c. 7.* Executors and Administrators of any, who as Executors, or Executors in their own Wrong, or Administrators, shall waste or convert any Estate of any Person deceased to their own Use, shall be chargeable as their Testator

or

or Intestate would have been, if living. This Act is made perpetual by 4 & 5 W. & M. Sess. 4. cap. 24. sect. 12.

By Statute 22 & 23 Car. 2. cap. 10. all Ordinaries and Ecclesiastical Judges, having Power to commit Administration, shall upon their granting Administration of Intestate's Goods, take Bonds with Sureties, two or more, in the Name of the Ordinary, with a Condition, (to exhibit a true Inventory, &c. and deliver up the Letters of Administration if a Will should happen to be exhibited by an Executor, &c.) [But see after.]

Ordinaries, &c. to take Bonds for exhibiting true Inventories.

That the Ordinaries, &c. may call such Administrators to account, and order Distribution of what remaineth after Debts, Funerals, and just Expences of all Sorts allowed, according to the Laws in such Cases, and the Rules hereafter set down: Saving to Persons aggrieved their Rights of Appeal.

Ordinaries may call Administrators to an Account, and order Distribution.

That the Customs of the City of London, and Province of York, be saved. [See after Tit. Frauds.]

Saving of the Customs of London and York.

That the Surplusage shall be distributed as follows; viz. One Third to the Wife of the Intestate, the Residue among his Children, and such as legally represent them, if any of them be dead, other than such Children (not Heirs at Law) who shall have any Estate by Settlement of the Intestate in his Life-time, equal to the other Shares: Children, other than Heirs at Law, advanced by Settlements or Portions not equal to the other Shares, shall have so much of the

A Review of all the Statutes,

Heir at Law.

Surplusage, as shall make the Estate of all to be equal: But the Heir at Law shall have an equal Part in the Distribution with the other Children, without any Consideration what he hath by Descent, or otherwise from the Intestate.

If no Children, or Representatives

That if there be no Children, nor legal Representatives of them, one Moiety shall be allotted to the Wife, the Residue equally to the next of Kindred to the Intestate in equal Degree, and those who represent them.

What Representatives to be admitted amongst Collaterals.

That no Representatives shall be admitted amongst Collaterals after Brothers and Sisters Children; And if there be no Wife, all shall be distributed among the Children; and if no Child, to the next of Kin to the Intestate in equal Degree, and their Representatives, *ut supra*.

Distribution, when to be made.

That no such Distribution shall be made till after one Year after the Intestate's Death; and every one to whom any Shares shall be allotted, shall give Bond with Sureties in the said Courts; that if Debts afterwards be made to appear, he shall refund his ratable Part thereof, and of the Administrators.

Administration *cum Testam^{to} annexo.*

That in all Cases where the Ordinary hath used to grant Administration, *cum Testamento annexo*, he shall continue so to do.

Note, This Act is made perpetual by 1 Jac. 2. cap. 17.

By

By Statute 29 Car. 2. cap. 3. the Act 22 & 23 Car. 2. cap. 10. shall not extend to the Estates of Feme Coverts that die Intestate; but that their Husbands may have Administration of their Personal Estate, as before the making of the said Act. [*Made perpetual by 1 Jac. 2. cap. 17.*]

Husbands may administer to their Wives.

By Statute 30 Car. 2. cap. 6. An Act for avoiding unnecessary Suits and Delays, (whereby, amongst other Things, it was enacted, That an Administrator *de Bonis non* may sue a *Scire facias*, and take Execution upon a Judgment had in the Name of an Executor or Administrator) is made perpetual.

Administrators *de Bonis non*, aided.

By Statute 1 Jac. 2. cap. 17. no Administrator shall be cited into any Ecclesiastical, or other Courts, having Right to take Probate of Wills, to render an Account of the Personal Estate of his Intestate, otherwise than by an Inventory thereof; unless at the Instance of some Person in Behalf of a Minor, or having a Demand out of such Estate as a Creditor, or next of Kin: Nor shall be compellable to account before any Ordinary, or Judge, employed by the Act of 22 & 23 Car. 2. cap. 10. otherwise than as aforesaid.

How an Administrator may be cited to render an Account.

That if, after the Death of Father, any of his Children shall die Intestate without Wife or Children, in the Life-time of the Mother, every Brother and Sister, and their Representatives, shall have equal Share with her.

If a Child die intestate, &c. in the Life of the Mother.

A Review of all the Statutes,

How the
afore said
Clause, as to
London and
York, shall ex-
tend.

That the Clause in the said Act, for the better settling Intestates Estates, by which is provided, That that Act shall not prejudice the Custom of the City of *London*, and Province of *York*, shall not be construed to extend to such Part of any Intestates Estate, as an Administrator, by Vertue of his being so, by Pretence of any Custom may claim, to exempt the same from Distribution.

[See more after Tit. Frauds.]

Admiralty.

The Juris-
diction there-
of in Proceed-
ings, &c.

BY Statute 2 *W. & M. Sess. 2. cap. 2.* it is declared, That all and singular Authorities, Jurisdictions and Powers, which by Act of Parliament or otherwise, are invested in the Lord High Admiral of *England* for the Time being, have always appertained to, and shall be used and executed by the Commissioners of the Admiralty, as if they were Lord High Admiral.

Of the Resi-
due as well as
the Principal
Matter.

And note, That where the Court of Admiralty has Jurisdiction of the principal Matter, it shall have Jurisdiction of all the Residue which depends upon it. 2 *Saund. Rep.* 260.

Advowson. [See before Tit. Ability, &c.]

Who may
have a Writ
of Advowson,
Quare Impedit,
&c.

BY 1 *West. 2. cap. 5.* 13 *E. 1.* Usurpation of Churches during Wardship, particular Estates, Coverture or Vacancy, shall not bar the Heir at full Age, the Reversioner or Remainder in Possession, the Feme Disco-

both Ancient and Modern, &c.

25

Discover, or the spiritual Person in Succession, from having the Writ of Advowson possessory, viz. *Quare Impedit*, or an Assise of *Darrein Presentment*, as their Ancestor or Predecessor might have had, if the Usurpation had happened in their Time; whereas before this Act they were (in such Cases) put to their Writ of Right of Advowson.

One and the same Form of Pleading shall be used in *Darrein Presentment*, and *Quare Impedit*, viz. if the Defendant alledgeth Plenarty of his own Presentation, the Plea shall not stay by reason of the Plenarty, so as the Writ be purchased within the six Months, albeit he cannot recover within that Time.

Form of Pleading.

Where Partition is made upon Record or by Fine, to present by Turn, the Coparcener that is disturbed shall not be put to a *Quare Impedit*, but may have Remedy upon the Roll or Fine by *Scire Facias*.

Partition between Coparceners.

[See after Tit. Amendment relating to Partitions, &c.]

When six Months pass hanging a *Quare Impedit*, or *Darrein Presentment*, so that the Bishop presents by Lapse, the Patron shall recover Damages to two Years Value of the Church; otherwise Damages only to Half a Year's Value.

Presentment by Lapse.

The Disturber not being able to render Damages, shall in the first Case have Imprisonment of two Years, and in the other of Half a Year.

Disturber to be imprisoned.

Writs

A Review of all the Statutes,

Chapels and
Vicarages.

Writs also shall hereafter be granted for Chapels, Prebends, Vicarages, Hospitals, Abbies, Priories, and other Houses, which be of the Advowsons of other Men.

Patron's Advantage.

When the Parson of a Church is disturbed to demand Tythes in the next Parish by *Indicavit*, the Patron shall have a Writ to demand the Advowson of those Tythes; and when it is deraigned, then shall the Plea pass in the *Court-Christian*.

Coparceners.

Amongst Coparceners, if one present twice together, yet shall not the other be barred, but have his or her Turn when it falleth.

[See after Tit. Amendment.]

Lapse.

Prerog. Reg. cap. 8. 17 E. 2. Lapse of six Months shall not prejudice the King's Presentation to a Church.

Patrons Remedy.

By Statute *de Clero, cap. 3. 23 E. 5.* when the King collates to the Church in another's Right, his Title shall be well examined, and the Patron grieved shall have as many Writs thereupon as shall be needful.

King's Title counterpleaded.

By Statute *de Clero, cap. 7. 23 E. 3.* when the Ordinary presents by Lapse, and the King takes the Suit against the Patron, who in Deceit suffers the King to recover; in this Case, when the King's Right is not tried, the Ordinary, or Incumbent, may counterplead the King's Title.

[See this Doctrine of Advowson in the Compleat Clergyman.]

Amidavits.

Affidavits. See Amendment.

BY Statute 16 & 17 Car. 2. cap. 9. the Chancellor of the Dutchy and County Palatine of *Lancaster* may, from Time to Time, empower Persons within the County Palatine, and other Dutchy Liberties, to take Affidavits concerning any Matter depending in the Court of Dutchy Chamber; which shall be filed in the Office of the Clerk of the Dutchy, and made use of as other Affidavits taken in the said Court are: And the Person taking such Affidavits, shall receive but 12 *d.* for so doing.

Commissioners to take them for the Dutchy of *Lancaster*, &c.

And by Statute 29 Car. 2. c. 5. the Chief Justice, and other the Justices of the Court of *King's-Bench*, or any two of them, whereof the Chief Justice to be one for that Court; the Chief Justice of the *Common-Pleas*, and the rest of the Justices there, or two of them, whereof the Chief Justice to be one for that Court; and the Lord Treasurer, Chancellor, and Barons of the *Exchequer*, or two of them, whereof the Lord Treasurer, Chancellor, or Chief Baron, to be one for that Court; may by one Commission or Commissions, under the several Seals of the respective Courts, empower Persons in the several Counties, to take Affidavits concerning any Thing depending, or concerning any Proceedings in the said Courts, as Masters of *Chancery* in Extraordinary use to do.

For the *King's-Bench*.

For the *Common-Pleas*.

For the *Exchequer*.

By a Judge in his Circuit.

Also any Judge of Assize in his Circuit may take and receive any Affidavit, that any Person shall be willing to make before him, in or concerning any Cause, Matter or Thing depending, or to be depending, or in any wise concerning any Proceedings to be in the said Courts of *King's-Bench*, *Common-Pleas* and *Exchequer*, or any of them respectively.

Such Affidavits to be filed, &c.

Which Affidavits shall be filed in their several and respective Offices of the said Courts to which they relate; and then be read and used in all the said Courts respectively, as other Affidavits are, and to be of the same Effect as Affidavits taken in Court are, (*viz.* to be read in Court upon Motions, but not upon Trials.)

Fee, and King's Duty.

The Persons taking such Affidavits, shall receive only 1 s. for so doing; and also the King's Duty shall be paid to the proper Officer.

Perjury.

All Persons forswearing themselves in such Affidavits, shall incur the said Penalties as if they had been taken in open Court.

Before whom Affidavits are to be made.

Note, An Affidavit touching a Cause depending in Court, must be made before one of the Judges of the Court, or Commissioner authorized by the said Act.

The Place of Habitation to be inserted.

Also the true Place of Habitation, and true Addition of every Person who shall make an Affidavit, shall be inserted into his Affidavit.

Quakers Affirmation.

The Statute of 7 & 8 W. 3. cap. 34. relates to a Quaker's Affirmation instead of an Oath.

Age and Age-Prater.

[See for the Learning on this Head, General Abridgment, fol. 253, &c.]

Aid and Aid-Prater.

[See also for this Title, and the Pleadings there, in Gen. Abridgment, fol. 269, &c.]

Aliens.

[For the Doctrine and Pleadings concerning an Alien born, Alien Friend, Alien Enemy, &c. See Gen. Abridgment, fol. 321, &c.]

Ambassadors.

BY a late Act passed *Anno 7 Anna Reginae*, Ambassador, and his Domesticks, not to be arrested.
it is enacted, That all Writs and Processes at any Time sued forth, whereby any Ambassador, &c. received as such by Her Majesty, or domestick Servant of such Ambassador, may be arrested, &c. shall be deemed null and void.

That any Persons suing forth any such Writs, and all Attornies, &c. executing of the same, being convicted by Confession, or by the Oath of one Witness, before the Lord Chancellor, the Chief Justices of the *Queen's Bench* and *Common-Pleas*; or any two of them, shall be deemed Violaters of the Laws of Nations, &c. and suffer such Pains, &c. as the Lord Chancellor, &c. shall judge fit.

Punishment of such as shall arrest them.

But

A Review of all the Statutes,

Persons not to
be protected.

Ambassadors
Servants to
be registred.

This to be al-
low'd as a
publick Act
of Parlia-
ment.

But no Merchant, or other Trader with-
in the Description of any Statutes against
Bankrupts, in the Service of any such Am-
bassador, &c. shall have the Benefit of this
Act.

And no Person shall be proceeded against
for the Arresting the Servant of any Amba-
sador, &c. unless the Name of such Servant
be first registred in the Secretary of State's
Office, and transmitted to the Sheriffs of
London and *Middlesex*, who shall hang up the
same in some publick Place in their Offices,
whereunto all Persons may resort, and take
Copies without Fee.

That this Act shall be allowed in all
Courts of this Kingdom as a publick Act:
And all Judges, &c. are to take Notice of
it, without special Pleading; and all She-
riffs, Bailiffs, &c. are to have Regard to this
Act at their Peril.

[See more concerning the Privilege and Pro-
tection of Ambassadors, Gen. Abridgment,
fol. 327, &c.]

Amendments relating to Law-Proces-
ses and Pleadings, &c.

Amendments
in Law-Pro-
cesses, &c.

WHERE Error is in the Process, there
the Judges may amend it after Judg-
ment; but if a wrong Judgment be given,
this cannot be so amended, but the Party is
put to a Writ of Error: Yet if the Fault
appears to be in the Clerk who writ the Re-
cord, this, it seems, may be amended, as by
the several Statutes hereafter mentioned will
appear.

By Statute 14 E. 3. 6. Stat. 1. a Process which is defective by Misprision of a Clerk, in one Syllable or Letter too much or too little, shall be amended without giving Advantage to the Party challenging the same.

Misprision of Clerks amendable.

By Statute 9 H. 5. 4. the Justices before whom such Default of Clerks, &c. shall be found in a Record or Process, may amend the same as well after Judgment as before, so long as such Record or Process shall continue before them.

Defaults amendable after Judgment, &c.

By Statute 4 H. 6. 3. the Statute of 9 H. 5. 4. is made perpetual, provided it shall not extend to Records or Processes in *Wales*, or whereby any Person is outlawed.

Not to extend to *Wales*.

By Statute 8 H. 6. 12. no Judgment or Record shall be reversed or annulled for Error assigned, by reason of the Razing or Interlining of any Record, Process, Warrant, Writ, Pannel, or Return; or of any Addition, Subtraction or Diminution of Words, Letters, Titles, or Parcel of Letters found in the same.

Razing or Interlining, not assignable for Error.

The Judges may reform all Defects in any Record, Process, Wards, Plea, Warrant, Writ, Pannel, or Return; (except Appeals, Indictments of Treason or Felony, and the Outlawries of the same, and the Substance of the proper Names, Surnames, and Additions left out in the original Writs, Exigents, and in other Writs of Proclamation contrary to the Statute of 1 H. 5. 5. (*which see in Addition*)) so that by such Misprision of the Clerk no Judgment shall be reversed or annulled.

What other Defects may or may not be amended.

Variance

Variance,
amendable.

Variance alledged between a Record and the Certificate thereof, shall be amended by the Judges.

Record im-
bezelled.

Imbezelling of a Record, is Felony.

Where a Re-
cord differs
from the
Exemplifica-
tion thereof.

If a Record, Process, Writ, Warrant, Pannel, Return, or any Parcel thereof, be exemplified under the Great Seal, and inrolled; for any Error assigned in the said Record, &c. in any Letter, Word, Clause or Matter varying, or contrary to the Exemplification and Inrolment, there shall be no Judgment reversed or annulled.

Defaults of
Clerks and
Officers a-
mendable,
and where.

By Statute 8 H. 6. 15. the Justices may amend the Misprision and Defaults of Clerks of the Court, or of Sheriffs their Clerks, and of all other Officers whatsoever, found before them in any Record or Process, or the Return of the same, by reason of writing one Letter, or one Syllable, too much or too little; except in Records and Processes within *Wales*, and of Felonies and Treasons, and the Dependants of the same.

[For what Amendments may be made at Common Law, and what by Statute 14 Ed. 3. 8 H. 6. as to Defaults of Clerks, and of Judgments in Names; and as to Amendments after Verdicts, and in what Cases, at what Time, and by whom, &c. See D'Anvers's Abridgment, fol. 329, 330, 331, &c. Tit. Amendment.]

Acco

Jeofails, &c. amendable or not.

A *Jeofail* is said to be, when the Parties *Jeofail*, what
to any Suit in Pleading have pro- it is.
ceeded so far, that Issue is joined to be tried
by a Jury; and the Pleading or Issue is so
badly pleaded or join'd, that it will be Er-
ror if they proceed. Then this may be
shewed to the Court as well after Verdict,
and before Judgment, as before the Jury are
charged.

By Statute 32 H. 8. cap. 30. after an Issue Judgment af-
tried, there shall be Judgment given not- ter Issue tried.
withstanding any Jeofail or Mispleading.

This Statute, it is said, helps only Matters
of Form, not of Substance, 5 Rep. 35, 36.
Also, that it helps informal Issues, but not
such as are immaterial.

[See the Explanation of this Statute, with very
many References to Cases and Pleadings concerning
it, in Danvers's Abridgment, fol. 352, 353.]

By Statute 18 Eliz. 14. after Verdict gi- Where no
ven in any Court of Record, there shall be Stay of Judg-
no Stay of Judgment or Reversing thereof ment, &c. af-
for Want of Form in any Writ original or ter Verdict,
judicial, Count, Declaration, Complaints, Bill, for Want of
Suit or Demand; or for Want of any Writ Form.
original or judicial, or by reason of any im-
perfect or insufficient Return of the Sheriff,
or other Officer; or for Want of any War-
rant of Attorney, or for any Default in
Progress upon or after *Aid-Praier* or *Vou-
cher*.

D

This

Not to extend
to Appeals of
Felony, &c.

Attornies to
deliver in
their War-
rants.

This Act shall not extend to any Writ, Declaration, or Suit of Appeal of Felony or Murther, or to any Indictment or Presentment of Felony, Murther, Treason, or other Matter, or to any Process upon any of them; or to any Writ, Bill, Action, or Information, upon any Penal Statute.

Provided, That all Attornies in any Suit, in a Court of Record, shall deliver in the Warrant of Attorney in such Suit, to be entered or filed of Record, as by the Law and Statutes of this Realm they ought to do, in Pain to forfeit 10 *l.* to be divided betwixt the Queen and the Officers where the Warrant should have been so filed, and to suffer Imprisonment by the Discretion of the Justices of the Court where the Default is made.

[See this Statute also explained, with many References to Cases and Pleadings, in D'Anvers's Abridgment, fol. 357, 358.]

Simile where
no Stay of
Judgment af-
ter Verdict,
for Want of
Form ;
Nor for Lack
of Averments.

Or for mis-
awarding a *Ve'*
fo', &c.

By Statute 21 *Jac.* 13. after Verdict given in any Court of Record, the Judgment thereupon shall not be stayed or reversed for any Variance in Form only between the original Writ or Bill, and the Declaration, Plaint or Demand; or for Lack of an Averment of the Party's Life, or Lives, so as it be proved he or they be in Life; or for that the *Venire Facias*, *Habeas Corpus*, or *Distringas*, was awarded to a wrong Officer, upon any insufficient Suggestion; or that the *Visne* was in some Part misawarded, or sued out of more or fewer Places than it ought to be, so

as some one Place be right named; or for misnaming any of the Jurors, either in the Sirname, or Addition in any of the Writs or Returns thereof, so as *Constat de Persona*, or for Want of a Return of any of the said Writs, so as a Pannel be returned and annexed thereunto; or for that the Officer's Name is not set to the Return, so as it appear by Proof that the Writ was returned by him; or by reason that the Plaintiff in any *Ejectione firmæ*, or in any personal Action, being under Age, did appear by Attorney, and the Verdict pass for him.

This Act shall not extend to any Writ, Declaration, or Suit of Appeal of Felony, Murther, nor to any Indictment or Presentment of Felony, Murther or Treason; nor to any Process upon any of them; nor to any Writ, Bill, Action, or Information upon any Penal Statute.

This Act not to extend to Appeals of Felony, &c.

[See D'Anvers's Abr. fol. 359. alias 455.]

By Statute 11 H. 4. 3. Justices of Assize shall deliver into the Treasury the Records of Assizes of *Novel disseisin*, *Mortdancaster*, and *Certifications*, every second Year after the Plea determined, and Judgment given; and those Records shall not be amended or impaired after Judgment given, and recorded.

Records of Assize not to be amended, or impaired.

Note, By Statute 16 & 17 Car. 2. cap. 8. after a Verdict of Twelve Men in an Action, Suit, Bill or Demand, commenced in any of the Courts of Record at *Westminster*, or

Amendment for Jeofails by Stat. 16 & 17 Car. 2. after a Verdict.

A Review of all the Statutes,

Courts of Record in the County Palatine of *Chester, Lancaster or Durham*, or Courts of the Great Session, or in any of the twelve Shires of *Wales*; Judgment thereupon shall not be stayed or reversed for Default in Form, or Lack of Form, or Lack of Pledges, or but one Pledge to prosecute returned upon the original Writ; or for Default of Entring of Pledges upon any Bill or Declaration; or for Default of Bringing into Court of any Bond, Bill, Indenture, or other Deed whatsoever mentioned in the Declaration, or other Pleading; or for Default of Allegation of the Bringing into Court of Letters Testamentary, or Letters of Administration, or by reason of the Omission of *Vi & Armis*, or *contra Pacem*; or for mistaking of the Christian Name or Surname of the Plaintiff or Defendant, Demandant or Tenant, Sum or Sums of Money, Day, Month or Year, by the Clerk, in any Bill, Declaration or Pleading, where the right Name, Surname, Sum, Day, Month or Year in any Writ, Complaint, Roll, or Record preceding, or in the same Roll or Record where the Mistake is committed, is rightly alledged, whereunto the Plaintiff might have demurred, and shewn the same for Cause: Nor for Want of the Averment of, *Hoc Paratus est verificare*, or, *Hoc Paratus est verificare per Recordum*; or for not alledging, *Prout patet per Recordum*; or for that there is no right Venue, so as the Cause were tried by a Jury of the proper County or Place where the Action is laid.

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Nor any Judgment after Verdict, Confession by *Cognovit Actionem*, or *Relicta Verificacione*, shall be reversed for Want of *Misericordia*, or *Capiatur*; or by reason that a *Capiatur* is entred for a *Misericordia*, or a *Misericordia* for a *Capiatur*: Nor that *Ideo Concessum est per Curiam*, is entred for *Ideo Consideratum est per Curiam*; nor for that Increase of Costs after a Verdict in any Action; or upon a Nonsuit in Replevin are not entred to be at the Request of the Party for whom the Judgment is given; nor by reason that the Costs in any Judgment whatsoever are not entred to be by Consent of the Plaintiff: But that all such Omissions, Variances, Defects, and other Matters of like Nature, not being against the Right of the Matter of the Suits, nor whereby the Issue or Trial are altered, shall be amended by the Justices, and other Judges of the Courts where such Judgments are or shall be given, or whereupon the Record is or shall be removed by Writ of Error.

Where Judgments after Verdict, *Cognovit Actionem*, &c. shall not be reversed.

Provided this Act extend not to any Writ, Declaration, or Suit of Appeal of Felony or Murther, nor any Indictment or Presentment of Felony, Murther, Treason, or other Matter; nor to any Process upon any of them; nor to any Writ, Bill, Action or Information upon any Penal Statute, other than concerning Customs and Subsidies of Tonnage and Poundage.

Not to extend to Appeals of Felony, &c.

Also no Execution shall be stay'd in any of the aforesaid Courts by Writ of Error, or *Superfedeas* thereupon, after Verdict and Judgment, in any Action Personal whatsoever,

Execution not to be stay'd.

A Review of all the Statutes,

unless a Recognizance with Condition, according to the Statute made 3 *Jac. cap. 8.* shall be first acknowledged in the Court where such Judgment shall be given.

[*See more of this after in Amendments as to Executions, &c.*]

This Act was to continue in Force for three Years only, and to the End of the next Session of Parliament after the said three Years; but made perpetual by 22 & 23 *Car. 2. cap. 4.*

[*For the Doctrine of the aforesaid Statutes of Jeofails, and the many Cases relating to the same, see D'Anvers's Abridgment, Tit. Amendment.*]

The Substance of the late Act for Amendment of the Law.

Causes of
Demurrer to
be set down.

BY Statute 4 & 5 *Anna, cap. 16.* upon Demurrer join'd in any Court of Record, the Judges shall give Judgment as the Right and Matter in Law shall appear, without regarding any Imperfection or Defect in any Writ, Return, Pleading or Process; except those which the Party demurring shall set down as Causes of his Demurrer, notwithstanding such Imperfection or Defect have been taken to be Matter of Substance, and not aided by 27 *Eliz. cap. 5.* so as sufficient Matter appear; upon which the Court may give Judgment.

And no Exception shall be taken for an immaterial Traverse, Default of entring Pledges upon Bill or Declaration; or not alledging the Bringing into Court any Deed mentioned in the Pleading, Letters Testamentary, or of Administration.

Exceptions not to be allowed as to an immaterial Traverse, &c.

Nor for Omission of *Vi & Armis*, and *contra Pacem*, or either of them; or *Hoc Paratus est verificare*, or *Hoc Paratus est verificare per Recordum*, or *Prout patet per Recordum*: But the Court shall give Judgment without regarding such Imperfections or Defects, or other Matter of like Nature, except shewed for Cause.

Omission of *Vi & Armis*, &c.

That all the Statutes of *Jeofails* shall extend to Judgments to be entred by Confession, *Nil dicit*, or *Non sum Informatus*, in any Court of Record: And no such Judgment shall be reversed, nor Writ of Inquiry of Damages thereon be stay'd or reversed, by reason of any Matter which would have been aided by any Statute of *Jeofails* in case of a Verdict, so as an original Writ or Bill, and Warrant of Attorney, be filed.

All Statutes of *Jeofails* to be extended to Judgments, &c.

Proviso, That the Plaintiff's Attorney file his Warrant the Term he declares; and the Defendant's Attorney the Term he appears, under the Penalties inflicted by former Laws for not filing.

Proviso for filing Warrants of Attorney.

That any Defendant or Tenant in any Action or Suit, or any Plaintiff in Replevin in any Court of Record, with Leave, may plead as many several Matters as are necessary.

Pleadings in Replevin, &c.

Costs for insufficient Matter on Demurrer.

Proviso, If any such Matter on Demurrer be judged insufficient, Costs shall be given at the Discretion of the Court ; or if a Verdict be found on any such Issue for the Plaintiff or Demandant, Costs shall be given in like manner ; unless the Judge certify, that the Defendant, Tenant, or Plaintiff in Replevin, had a probable Cause to plead it.

Challenges to the Array prevented.

That *Venires* out of Courts of Record at *Westminster*, shall be awarded of the Body of the County where the Issue is triable.

A Saving to Appeals, &c.

Proviso, That nothing before extend to Appeals of Felony or Murder, or other Matter, or to any Process on any of them ; or to any Writ, Bill, or Information, on any Penal Statute.

When the Jury ought to have View of Lands, &c.

That the Courts at *Westminster* may order special Writs of *Distringas*, or *Habeas Corpora*, to cause six or more of the first twelve Jurors, to have Matters in question shewn to their View, by two Persons in the Writs named appointed by the Court ; and the Sheriff shall return the View.

Attornment of Tenants, where need- less.

That all Conveyances of Manors, Rents, Reversion or Remainder of Messuages or Lands, shall be good, without Attornment of the particular Tenants thereof.

Notice to Tenant.

Proviso, That no such Tenant be prejudiced by Payment of Rent, or Breach of Condition for Non-payment before Notice.

That

That no Dilatory Plea shall be received in any Court of Record, unless the Truth thereof be proved by Affidavit, or some probable Matter shewn. As to dilatory Pleas.

That in Debt, on single Bill, Debt or *Sci' Fac'*, upon a Judgment, the Defendant may plead Payment in Bar: In Debt upon Bond, if the Defendant before Action brought hath paid the Principal and Interest due by the Defeazance, or Condition, he may plead Payment in Bar. Payments pleaded upon Bonds, &c.

That pending an Action on such Bond, Defendant may bring in the Principal, Interest, and Costs in Law and Equity; and then the Court shall give Judgment to discharge the Defendant. Principal and Interest, &c. brought into Court.

That Witnesses that are good Witnesses at Trials at Common Law, shall be deemed good Witnesses to prove a Nuncupative Will, or any Thing relating thereunto. Witnesses to a Nuncupative Will.

That Declarations of Uses or Trusts by Deed, made after Fines or Recoveries, shall be good in Law, as if 29 *Car. 2. cap. 3.* (concerning Frauds and Perjuries) had not been made. Uses of Trusts may be made after Fines, &c.

That no Claim or Entry shall avoid any Fine with Proclamations in the *Common-Pleas*, Counties Palatine, or *Wales*; or shall be a sufficient Claim or Entry within 21 *Jac. 1. cap. 16.* for Limitation of Actions, unless an Action be commenced in one Year after such Entry or Claim, and prosecuted with Effect. Entry and Claims to avoid Fines.

That

A Review of all the Statutes,

Suits in the
Admiralty
for Seamen's
Wages.

That all Suits in the Admiralty for Seamen's Wages, shall be commenced in six Years after the Cause of Action.

Proviso, That if the Person intituled to such Suit be within Age, Feme Covert, *Non Compos*, imprisoned, or beyond Sea, then such Person may bring the Action within six Years after full Age, Discoverture, *sane* Memory, at large, and return.

Actions saved
to Persons be-
yond Sea, &c.

If any Person against whom Cause of Action for Seamen's Wages, or for Trespass, Detinue, Trover, Replevin, Account, Case or Debt grounded on Contract, or Lending, or for Rent, shall at the Time of such Cause of Suit accrued be beyond Seas, then the Person intituled to such Suit, may bring an Action after the Return of such Person, so as he bring the same within such Time after the Return as is limited by this Act, and by 21 *Jac. 1. cap. 16.*

Sheriff's Bail-
Bonds to be
assigned to
the Plaintiff,
&c.

That the Sheriff, or other Officer, taking Bail at the Suit of a common Person, Plaintiff, shall at the Request of such Plaintiff, or his Attorney, assign to the Plaintiff the Bail-Bond, or other Security taken, by Endorsing the same in the Presence of two Witnesses, under his Hand and Seal, without Stamp: Provided it be stamp'd before Action brought; and if forfeited, an Action may be brought in the Plaintiff's own Name; and the Court where the Action is brought may, by Rule of Court, give such Relief thereon as is agreeable to Reason.

That

That Warranties made after the first Day of *Trinity-Term* (then next) for Life, descending on him in the Reversion or Remainder; and all Collateral Warranties by any Ancestor, who has no Estate of Inheritance in Possession in the same, shall be void against the Heir.

That no *Subpæna*, or Process, shall issue out of any Court of Equity, till a Bill filed, (except Injunctions to stay Waste, or Suits at Law commenced) and a Certificate thereof brought to the *Subpæna Office*, under the Hand of the Six Clerk.

That upon a Dismission of a Bill, the Plaintiff shall pay full Costs, to be taxed by a Master: And no Tenor of a Bill is to go with the *Dedimus*; but in Lieu thereof, the sworn Clerks are to take the whole Term-Fee of 3 s. 4 d. and the whole Fee of all small Writs made by them.

That this Act, and all the Statutes of *Jeofails*, shall extend to all Suits in Courts of Record at *Westminster*, for Recovery of Debts immediately owing, or Revenue belonging, to the Queen and Her Successors, and to all Courts of Record in this Kingdom.

That upon quashing Writs of Error, for Defect or Variance from the Record, the Defendant shall recover his Costs, as if Judgment had been affirmed.

Warranties against an Heir to be void.

No *Subpæna* in Equity, till a Bill filed.

Upon a Dismission of a Bill, Plaintiff to pay full Costs.

This Act, and Jeofails, to extend to all Counties Palatine, &c.

Costs upon quashing Writs of Error.

That

Concerning
Wages due
from Her
Majesty's
Yards or
Docks.

That the Salary, Wages or Pay, due to Persons for Work done in any Her Majesty's Yards or Docks, shall not be deemed *Bona Notabilia*, whereby to found the Jurisdiction of the Prerogative-Court to grant the Probate of Wills, or Letters of Administration; but that the Power of granting Probates of such Wills, or Letters of Administration, is declared to be in the Ordinary of the Diocese, &c.

How Actions
of Account
may be
brought a-
gainst Execu-
tors and
Guardians,
&c.

That Actions of Account may be brought against Executors and Administrators of every Guardian, Bailiff and Receiver; and by one Joint-tenant, and Tenant in Common, his Executors and Administrators, against the other; as Bailiff for receiving more than his just Share, and against their Executors and Administrators. And the Auditors appointed by the Court, shall examine the Parties about the Matters in question upon Oath; and the Auditors shall be allowed as the Court shall think reasonable, by the Party on whose Side the Ballance shall be upon the Account.

Auditors
Fees.

Amend.

Note

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Amendments.

Note, **T**Here being many other Statutes relating to Law-Procefs and Proceedings ; as,

1. Amendment relating to Arbitration.
2. Relating to Costs and Damages.
3. As concerning Executions upon Statutes and Judgments, &c.
4. To prevent Frauds in Leases, Wills, &c.
5. As concerning Promissory Notes, Judgments and Recognizances.
6. As concerning Writs of *Mandamus* and *Quo-Warranto's*.
7. As relating to Partition between Co-heirs, &c.

We will therefore, by way of a Summary and Precaution, place them under this general Head of *Amendment*, and refer thereunto in their Alphabetical Order.

Amendment as to Arbitration and Awards.

BY 9 & 10 W. 3. cap. 15. all Merchants and Traders, and others, desiring to end any Controversy, Suit or Quarrel (for which there is no other Remedy but by Personal Action, or Suit in Equity) by Arbitration, may agree, That their Submission of the Suit to the Award, or Umpirage, of any Person or Persons, should be made a Rule

How Suits may be ended by Arbitrament.

A Review of all the Statutes,

Affidavit.

Disobeying
the Rule of
Court.Corrupt
Award.

Rule of any of his Majesty's Courts of Record ; which the Parties shall chuse, and may insert such their Agreement in their Submission, or the Condition of the Bond or Promise : And upon producing an Affidavit of such Inserting, and upon Reading and Filing such Affidavit in the Court so chose, the same may be entred of Record in such Court : And a Rule of Court shall thereupon be made, That the Parties shall submit to, and finally be concluded by such Arbitration or Umpirage : And in case of Disobedience thereto, the Party neglecting or refusing shall be subject to all the Penalties of contemning a Rule of Court, and Process shall issue accordingly ; which shall not be stop'd or delayed, unless it appear on Oath, That the Arbitrators or Umpire misbehaved themselves, and that such Award was corruptly or unduly procured : In which Case, such Arbitration or Umpirage shall be void, and set aside by any Court of Law or Equity, so as such Corruption or undue Practice be complained of, in the Court where the Rule is made for such Arbitration, before the last Day of the next Term after such Arbitration made and published to the Parties.

[See after Tit. Attachment.]

Amend.

Amendments relating to Costs and Damages, &c.

BY Statute 11 & 12 W. 3: cap. 9. for Preventing of frivolous and vexatious Suits in the Principality of *Wales*, and the Counties Palatine, this Clause in the Act of 22 & 23 Car. 2. cap. 9. directing, That in Personal Actions, where the Jury shall find Damages under 40 s. the Plaintiff shall recover no more Costs of Suit than Damages: Which Clause having Reference to an Act of 43 Eliz. cap. 6. touching Suits commenced in the Courts of *Westminster*, is by this Act extended to the Courts in *Wales*, and the said Counties Palatine of *Chester* and *Durham*: And none shall be held to special Bail in small Actions in *Wales*, and the Counties Palatine, unless Affidavit be made and filed in the Courts of *Westminster*, whence the Process issues, signifying the Cause of Action, and that it is 20 l. or upwards: And Bail shall not be taken for more than the Sum so expressed.

For preventing frivolous and vexatious Suits, no more Costs than Damages.

Bail.

The

The JUDGES Opinions relating to these Acts, of giving no more Costs than Damages, as delivered in Serjeants-Inn in Chancery-Lane, London, Trin' Term' 23 Car. 2.

The Clause of the Act
23 Car. 2. c. 2.
for no more
Costs than
Damages.

Personal
Actions to
be certified.

If the Dama-
ges be found
to be under
40 s.

THE Clause in the Act: ' And for
' Prevention of trivial and vexatious
' Suits in Law, whereby many good Sub-
' jects of this Realm have been and are
' daily undone, contrary to an Act made
' in the 43d Year of Queen *Elizabeth*,
' for avoiding of infinite Numbers of tri-
' vial and vexatious Suits commenced in
' the Courts at *Westminster*: Be it farther
' enacted, for the making the said Law ef-
' fectual, That from and after the first Day
' aforesaid, in all Actions of Trespass, Af-
' fault and Battery, and other Personal
' Actions, wherein the Judge at the Trial
' of the Cause shall not find, and certify
' under his Hand upon the Back of the Re-
' cord, that an Assault and Battery was suf-
' ficiently proved by the Plaintiff against
' the Defendant; or that the Freehold or
' Title of the Land mentioned in the Plain-
' tiff's Declaration, was chiefly in question;
' The Plaintiff in such Action, in case the
' Jury shall find the Damages to be under
' the Value of Forty Shillings, shall not re-
' cover or obtain more Costs of Suit than
' the Damages so found shall amount unto.

' And

‘ And if any more Costs in any such
‘ Action shall be awarded, the Judgment
‘ shall be void, and the Defendant is here-
‘ by acquitted of and from the same, and
‘ may have his Action against the Plaintiff
‘ for such vexatious Suits, and recover his
‘ Damages and Costs of such his Suit in any
‘ of the said Courts of Record.

The Judges Opinion.

- I. **THAT** Actions of Debt are not within Debt.
this Clause.
- II. That no Action upon the Case, *sur Case sur As-*
Assumpsit, Account, or other Personal *sumpsit*,
Actions, (other than for Assault and Bat-
tery, or voluntary Trespass, where the
Title comes not, nor cannot come in
question) is within this Clause.
- III. That the Judge is bound to certify on Assault and
Actions of Assault and Battery, where Battery.
the Jury shall find Damages to Ten Shil-
lings or less, That the Battery is suffici-
ently proved; otherwise the Plaintiff is to
have no more Costs than Damages.
- IV. That if the Defendant pleads *son Assault* Certificate
Demesne, and the Jury find it *ad Dampnum* upon *son As-*
Querentis; the Certificate must be, That *sault Demesne*.
the Jury find by the Defendant's Plea,
that the Battery is admitted, and suffi-
ciently proved.
- V. That if an Assault be proved, and no
Battery, there needs no Certificate.
- VI. That in case of a Certificate, where it Indorsing the
is requisite it must be indorsed on the Pan- Certificate.
nel, or *Nomina Jur'*, with the Judge's
E Hand

A Review of all the Statutes,

Hand to it immediately after the Trial; and the Certificate is to be, That the Battery is fully proved.

Extent of the Clause.

VII. That the Clause extends only where Damages are only to be recovered, and not in Debt, because Debt is not within the Words; (although the Debt be under Forty Shillings, it is all one, it need no Certificate.)

Actions for Common, &c.

VIII. That in all Actions for a Common, a Way, a Nufance, Lights, Water-courses, &c. the Judges may certify, because the Freehold may come in question, altho' it be not mentioned in the Declaration.

Judgments by Default.

IX. That the Clause extends not to Judgments by Default, or Writs of Inquiry of Damages.

Trinity-Term, MDCLXXI.

<i>Matthew Hale.</i>	}	<i>Jo. Archer.</i>
<i>Tho. Twysden.</i>		<i>Will. Wylde.</i>
<i>Ri. Raynsford.</i>		<i>Edw. Turner.</i>
<i>Will. Moreton.</i>		<i>Hugh Wyndham.</i>
<i>Jo. Vaughan.</i>		<i>Chr. Turner.</i>
<i>Tho. Tyrrill.</i>		<i>T. Littleton.</i>

March 31. 1688. This
may be Printed.

R. WRIGHT.

By Statute 8 & 9 W. 3. cap. 11. where several Persons shall be made Defendants to any Action of Trespass, Assault, false Imprisonment, or *Ejectione Firmæ*, and any one or more shall upon Trial be acquitted by Verdict; every Person so acquitted shall recover his Costs of Suit, unless the Judge shall immediately after the Trial, in open Court, certify upon the Record, That there was a reasonable Cause for making such Person or Persons a Defendant or Defendants to such Action.

Persons acquitted in Actions of Trespass, &c. to recover Costs, unless, &c.

That if any Person shall commence in any Court of Record, any Action or Suit whereupon Demurrer, Judgment shall be given against the Plaintiff or Defendant; or if at any Time after Judgment given for the Defendant, the Plaintiff shall sue a Writ of Error, and the said Judgment shall be affirm'd, or the said Writ discontinued, or the Plaintiff nonsuit therein, the Defendant shall have Judgment to recover his Costs against such Plaintiff, and Execution by *Capias ad Satisfaciendum*, *Fieri Facias*, or *Elegit*.

Costs, where Judgment shall be given on Demurrer, or Writs of Error.

That in all Actions of Waste and Debt upon the Statute, for not setting forth of Tythes, where the Damage found by the Jury shall not exceed twenty Nobles; and in all Suits upon Writs of *Sci'ri Facias*, and upon Prohibitions, the Plaintiff obtaining Judgment, or Award of Execution after Plea pleaded, or Demurrer join'd therein, shall likewise recover his Costs of Suit; and

Costs in Waste and Debt for Tythes.

Sci' fa', and Prohibitions.

A Review of all the Statutes,

if the Plaintiff become nonsuit, or discontinue, or a Verdict pass against him, the Defendant shall have Costs and Execution for the same.

Costs and Damages upon a wilful Trespass.

That in all Actions of Trespass in any Court of Record at *Westminster*, where it shall appear at the Trial, and be certified by the Judge on the Back of the Record, that the Trespass was wilful and malicious, the Plaintiff shall recover not only his Damages, but his full Costs of Suit.

A Saving to Executors, &c.

Provided nothing herein contain'd shall alter the Laws in being as to Executors and Administrators, in such Cases where they are not at present liable to pay Costs of Suit.

No Abatement if Plaintiff, &c. die after an Interlocutory Judgment.

That in all Actions commenced in any Court of Record, if the Plaintiff die after an Interlocutory Judgment, the said Action shall not abate if the said Action might be originally prosecuted by his Executors or Administrators: And the Executors or Administrators of such Plaintiff, after such Interlocutory Judgment, may have a *Scire Facias* against the Defendant, if living; or if dead, against his Executors or Administrators, to shew Cause why Damages should not be assessed and recovered against him or them: And if he or they do not appear at the Return, and shew sufficient Cause to arrest the final Judgment, or being return'd warn'd, or upon two Writs of *Scire Facias*, it being return'd that the Defendant had nothing

nothing whereby to be summoned, or could not be found, a Writ of Inquiry of Damages shall be awarded : Which being executed and return'd, Judgment final shall be given for the said Plaintiff, his Executors or Administrators.

And if there be two or more Plaintiffs or Defendants, and one die, if the Cause of Action survive to the surviving Plaintiff, or against the surviving Defendant, the Writ or Action shall not abate ; but such Death being suggested upon the Record, the Action shall proceed.

Where one of the Plaintiffs or Defendants dies.

[See after, where Death of either Party between Verdict and Judgment shall not be alledged for Error.]

That in all Actions prosecuted in any of the King's Courts of Record, upon any Bond or Penal Sum, for Non-performance of Covenants, the Plaintiff may assign as many Breaches as he shall think fit ; and the Jury at the Trial shall and may assess Damages for such of the said Breaches so assigned, as the Plaintiff at the Trial shall prove broken : And the like Judgment shall be entred on such Verdict, as hath been usually done in such Actions.

What Breaches may be assigned in Actions of Covenant ; how many, and when.

And if Judgment be given for the Plaintiff upon Demurrer, Confession, or *Nihil dicit*, the Plaintiff upon the Roll may suggest as many Breaches as he shall think fit : Upon which shall issue a Writ to summon a Jury to appear at the Assizes of that respective County, to enquire of the Truth of

Suggestion of Breaches upon a Demurrer, &c.

A Review of all the Statutes,

every one of those Breaches, and to assess Damages accordingly: And the Justices of Assize shall make a Return thereof to the Court from whence the same issued.

Stay of Execution.

In case the Defendant, after such Judgment entred, and before Execution executed, shall pay into Court such Damages so assessed, and Costs of Suit, a Stay of Execution shall be entred on Record.

Satisfaction to be entred, &c.

Or if by reason of Execution executed, the Plaintiff, or his Executors or Administrators, shall be fully paid all such Damages, together with his Costs, and reasonable Charges, the Body, Lands and Goods of the Defendant, shall be forthwith discharged, and the Satisfaction entred on Record.

The Judgment to stand as a Surety for further Breaches.

Yet shall the said Judgment stand and be as a further Surety to answer the Plaintiff, his Executors, &c. such Damages as shall or may be sustained, for further Breach of any Covenant, in the said Deed or Writing contain'd: Upon which the Plaintiff, &c. may have a *Scire facias* upon the said Judgment against the Defendant, his Heir, Tertenants, Executors or Administrators, suggesting other Breaches, and to summon them to shew Cause why Execution shall not be awarded upon the said Judgment: Upon which there shall be the like Proceedings as aforesaid; and upon Payment of Damages and Costs, Proceedings to be again stay'd, and so *toties quatenus*, and the Defendant discharged out of Execution.

Defendant to be discharged, &c.

Amend

Amendment as to Writs of Error.

I. Statute 5 E. 3. 2. *in fine*, and 10 E. 3. Stat. 2. 3. Where Error is made before the King's Steward and Marshal, the Plaintiff may by Writ remove the Record into the *King's-Bench*, and may there have it redressed. Upon an Error before the King's Steward and Marshal.

II. Statute 31 E. 3. Stat. 1. 12. The Lord Chancellor and Treasurer calling to them such of the Justices, and other sage Persons, as they shall think fit, as also the Barons of the *Exchequer* (to give the Reasons of their Judgments) may examine erroneous Judgments given in the *Exchequer*; and (if any Error be found) may correct the Rolls, to the End the *Exchequer* may proceed to Execution. Erroneous Judgments given in the *Exchequer*.

[See after.]

III. Statute 32 Eliz. 3. Fines and Recoveries, and all Matters concerning them now extant and in being, may be inrolled; which Inrolment shall be of as great Validity, as the same so extant and remaining in being. Upon Fines and Recoveries, &c. inrolled.

IV. No Fine, Proclamation or Recovery, shall be reversable for false *Latin*, Razure, Interlining, Misentring, Misreturning, not Returning, or any other Matter of Form, and not of Substance. False *Latin* in Fines, &c.

V. This Act shall not bar any from a Writ of Error upon any Fine or Recovery heretofore had and pursued within five Years after Persons not barr'd from Writs of Error.

after this Parliament; or which before the First of June 1582. was exemplified under the Great Seal; nor a Feme Covert, Infant, *Non Compos Mentis*, one in Prison or beyond Sea, so that they or their Heirs pursue such Writ within seven Years after such Imperfection, Restraint or Absence removed: And if any of them happen to die hanging the Suit, their Heir may undertake it within one Year after the said seven Years; and if the Heir be under Age, then within one Year after his full Age.

Certificate of
Fines and
Recoveries.

VI. The Day and Year of the Acknowledgment of a Fine, and of the Warrant of Attorney for the suffering of a Recovery, shall be certified, together with the Concord or Warrant, and none shall be enforced so to certify but within one Year after such Acknowledgment made, or Warrant given.

Penalty.

VII. No Officer shall receive any Writ of Covenant or Entry, without the Day so certified, in Pain of 5 l.

Attornment
upon Fines,
&c.

VIII. No Attornment upon any Fine, in a *Quid juris clamat*, *Quem redditum reddit*, or *Per quæ servitia*, shall be entred upon Record, unless the Party attorning have first appeared in Court, or by Attorney warranted under the Hand of a Justice of one of the Benches, or of Assize: And every Attornment otherwise made, shall be void without any Writ of Error, or other Means to be used for the avoiding thereof.

Inrolment of
Fines and
Recoveries.

IX. There shall be an Office for the Inrolments of Writs for Fines and Recoveries, and one of the Justices of the *Common-Pleas* (besides

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(besides the Chief Justice) shall have the Care thereof; and shall have for the Inrolment and Examination of every Fine, with the Parts thereof, 6 s. 8 d. and as much for a Recovery, and the Parts thereof; and for every Exemplification of them, 5 s. and for the Search of every Year, 4 d. and for every Sheet of a Copy (containing 14 Lines) 4 d. and shall subscribe his Name to the Roll after he hath so examined it, in Pain of 5 l.

X. The said Justice shall have Power to punish the Officers, who manage that Employment, by Fine or Amerciament, for their Misprision or Negligence therein; which shall be estreated amongst the Fines and Amerciaments of that Court.

Punishment of Officers employed.

XI. The *Chirographer* shall the first Day of every Term, fix in the Court of *Common-Pleas*, a Table of each County, containing a true Content of the Fines passed in any one Term; and shall also deliver the like to each Sheriff, in Pain of 5 l. and the Sheriff shall fix it up in the Court at the next Assizes, in like Pain of 5 l. The said Forfeitures are to be divided betwixt the Queen and the Prosecutor; and the *Chirographer's* Fee for every such Content is 4 d.

A Table of Fines to be fixed in Court by the Chirographer.

XII. The Records shall not be carried out of the Office of Inrolments, and Fines and Recoveries already passed and exemplified, shall not be afterwards amended.

Records, &c. not to be carried out of the Office.

XIII. Statute 27 *Eliz.* 8. Where a Judgment is given in the *King's-Bench* in Debt, Detinue, Covenant, Accompt, Action upon the Case, *Ejectione firmæ*, or Trespass, first commen-

Erroneous Judgment, how removable from the *King's-Bench* Court.

A Review of all the Statutes,

commenced there (other than such where the Queen is Party), the Plaintiff or Defendant may sue forth of the *Chancery* a Writ of Error, commanding the Chief Justice to cause the Record to be brought before the Justices of the *Common-Pleas*, and Barons of the *Exchequer*, into the *Exchequer-Chamber*; which Justices and Barons, or any Six of them, (being of the Coif) have there Power to examine, and reverse or affirm the said Judgment; other than for Error concerning the Jurisdiction of the *King's-Bench*, or for Want of Form in any Writ, Return, Plaint, Bill, Declaration, or other Proceeding whatsoever: And after such Judgment reversed or affirmed, the said Record shall be remanded, that the *King's-Bench* may proceed thereupon as shall appertain; yet such Reversal or Affirmation shall not be so final, but that the Party who finds himself grieved, may still sue in Parliament, as before. [See after.]

Where the Writ of Error adjourn'd. shall not be discontinued.

XIV. Statute 31 *Eliz.* 1. The not coming of the Chancellor and Treasurer at the Day of Adjournment in any Suit of Error depending by Force of 31 *E.* 3. Stat. 1. c. 12. shall not be any Discontinuance of the Writ of Error: But if both the Chief Justices, or either of those Great Officers be there, it shall be no Discontinuance: Howbeit, no Judgment shall be given therein, unless both those Officers be there present. [See after.]

Who may receive Writs of Error Non ob-
stan. 27 *El.* c. 8.

XV. Any three of the Justices of the *Common-Pleas*, or Barons of the *Exchequer*, may receive Writs of Error, award Process thereupon, and prefix Days of Continuance for

for such Writs notwithstanding the Statute of 27 Eliz. 8. but no Judgment shall be given therein without the full Appearance of Six according to that Statute: And here also the Party that finds himself grieved, may sue in Parliament as before.

XVI. Statute 16 Car. 2. cap. 2. For preventing Abatement of Writs of Error upon Judgments in the *Exchequer*, enacted, That the not coming of the Lord Chancellor and Lord Treasurer, or either of them, at the Day of Return of any Writ of Error, to be sued forth by Vertue of the Stat. 31 E. 3. c. 12. (recited in the Statute 31 El. c. 1.) shall not cause any Abatement or Discontinuance of any such Writ of Error: But if both the Chief Justices of either Bench, or either of them, or any one of the said Great Officers, the Lord Chancellor or Lord Treasurer, shall come to the *Exchequer-Chamber*, and there be present at the Day of Return of any such Writ of Error, it shall be no Abatement or Discontinuance: But the Suit shall proceed to all Intents, as if the said Lord Chancellor and Lord Treasurer had come and been present at the Day and Place of Return of such Writs.

Where no Abatement, or Discontinuance of Writs of Error, shall be for the not coming of the Lord Chancellor, &c.

Provided no Judgment be given in any such Suit or Writ of Error, unless both the Lord Chancellor and Lord Treasurer shall be present thereat.

Judgment given before whom.

[See after Amendments, as concerning Executions: Also Tit. Error.]

Amend

Amendments, as concerning Executions upon Statutes, and Judgments in Civil Actions, &c.

What Execution upon a Debt or Damages recovered.

BY *Westm. 2. 18. 13 Ed. 1.* he that recovereth a Debt or Damages in the King's Court, may at his Choice have a *Fieri facias* of the Land and Chattels of the Debtor, (except Oxen and Plow-Beasts) and a Moiety of his Land by reasonable Extent, till the Debt be levied: And if he be ejected out of the Land, he shall have an Assise, and afterward a Writ of Disseisin if need be: And this last Writ is called an *Elegit*.

Of what Things an Execution within the Year.

By *Westm. 2.* for all Things recorded before the King's Justices, or contained in Fines, (whether Contracts, Covenants, Obligations, Services for Customs acknowledged, or any other Things inrolled) a Writ of Execution shall be within the Year, but after the Year a *Scire facias*: Whereupon if Satisfaction be not made, or good Cause shewed, the Sheriff shall be commanded to do Execution.

Ordinary commanded.

In like manner also shall the Ordinary be commanded in his Case.

When Lands delivered in Execution, are recovered without Fraud.

By *32 Hen. 8. 5.* if Lands delivered in Execution on just Cause, be recovered without Fraud from the Tenant in Execution before he shall have levied or received his whole Debt and Damages; he may have a *Scire facias* out of the Court from whence he

he had the Execution, retornable into the same Court at a Day (40 Days at least) after the Date of such *Scire facias*: At which Day, if the Defendant, being lawfully warn'd, make Default, or do appear, and do not plead a sufficient Cause (other than the former Acceptance of the Lands) to avoid the said Suit for the Residue of the said Debt and Damages, the said Court shall issue forth a new Writ of Execution for the levying thereof. *Sci' fa'.*

And new Execution.

By 1 *Jac.* 1. 13. if any taken in Execution be delivered by Privilege of Parliament; as soon as such Privilege ceaseth, the Plaintiff, his Executors or Administrators, may sue out a new Execution against him; and the Sheriff, or other Officer, shall not be chargeable for the first Arrest. If a Parliament-Man taken in Execution, be delivered, &c.

But this Act shall not lessen the Punishment of any by Censure of Parliament, who shall presume to procure such an Arrest.

And here it may be observed, That by 12 *W.* 3. *cap.* 3. Actions may be prosecuted in his Majesty's Court of Record at *Westminster*, High Courts of *Chancery*, *Exchequer*, *Dutchy*, Admiralty, and in Causes Matrimonial and Testamentary in the Arches, Prerogatives of *Canterbury* and *York*, Delegates, and Courts of Appeal, against any Person intitled to Privilege of Parliament, immediately after Dissolution or Prorogation, until a new Parliament, or the same re-assembled; and immediately after Adjournment of both Houses for above 14 Days, until Process against Parliament-Men by 12 *W.* 3. *c.* 3. after a Dissolution, &c.

A Review of all the Statutes,

until re-assumed: The said Courts during such Time, to proceed to give Judgment, make final Orders, &c.

No Arrests during Privilege.

Proviso, Not to subject the House of Commons, or any intitled to Privilege of Parliament, to arrest during Privilege.

Against Lords and Commons, out of Time of Privilege, by Summons, Distress Infinite, &c.

But Persons having Cause of Action against Lords of Parliament during such Time as aforesaid, may have such Process out of the *Kings-Bench*, *Common-Pleas* and *Exchequer*, as they might out of Time of Privilege; and may have Process against any of the House of Commons, or other Person intitled to Privilege of Parliament during the Time aforesaid, out of the same Courts by Summons, Distress Infinite, or by Original Bill, Summons, Attachment, and Distress Infinite; which the said Courts are hereby impowered to issue against them till they appear, or file Common Bail.

Process upon Bills in Chancery, &c.

Persons exhibiting Bills (against any intitled to Privilege of Parliament) in the *Chancery*, *Exchequer*, or *Dutchy*, may proceed upon leaving Copy of the Bill with the Defendant, (or at his House, Lodging, or last Place of Abode:) And for Want of Appearance, or Answer, or for Non-performance, or Breach of Order or Decree, may sequester the Estate of the Party, as is used where the Defendant is a Peer; but not arrest the Body of any Knight, Citizen and Burgefs, or other privileged Person, during Continuance of Privilege.

The Plaintiff stay'd by Privilege of Parliament, shall not be barr'd by the Statute of *Limitations*, nonsuited, dismissed, nor have his Suit discontinued for Want of Prosecution; but shall upon the Rising of the Parliament, be at Liberty to proceed to Judgment and Execution.

Plaintiff not barr'd by Statute of Limitations.

No Proceeding in Law or Equity against the King's original and immediate Debtor, for a Duty originally and immediately due, or against the King's Accountant, for any Part of his Revenue, or other original and immediate Debt, shall be impeached or delayed under Pretence of Privilege of Parliament.

No Delay of Process against the King's original Debtor, &c.

Nevertheless, such Debtor or Accountant, being a Lord of Parliament, shall not be arrested upon such Proceedings: Or being a Member of the House of Commons, shall not, during the Continuance of the Privilege of Parliament, be arrested upon such Process.

Yet Debtor not to be arrested.

Proviso, That this Act shall not give Jurisdiction to any Court to hold Plea in any Real or Mix'd Action, in other manner than such Court might have done before.

No further Jurisdiction given.

And by Statute 2 *Anna*, c. 18. any Action or Suit may be prosecuted in her Majesty's Courts at *Westminster*, against any Officer of the Revenue, or other Officer of Publick Trust, for any Forfeiture, Misdemeanor or Breach of Trust, relating to such Office or Trust: And no such Suit or Execution there.

Process against Officers for Breach of Publick Trust.

thereupon, though such Officer be Peer, Lord of Parliament, Knight, Citizen or Burgess of the House of Commons, or otherwise intitled to Privilege of Parliament, shall be stay'd by Colour of such Privilege.

Yet if a Peer,
&c. not to be
arrested.

Nothing herein shall subject the Person of such Officer, being a Peer or Lord of Parliament, to be arrested: But such Process shall issue against such Officer or Person, being a Peer, as should have issued against him out of the Time of Privilege.

Nor a Knight
or Commoner,
but by
Summons and
Distress, &c.

Nor shall subject the Person of a Knight, Citizen or Burgess of the House of Commons, to be arrested during Time of Privilege, but Summons, Distress Infinite, or Original Bill, Summons, Attachment, and Distress Infinite, shall be issued: Which the said Courts are impowered to issue until the Party shall appear.

When Execution
may
be stay'd not
by Writ of
Error.

By 3 Jac. 1. cap. 8. no Execution shall be stay'd upon any Writ of Error, or *Superfedeas* thereupon, for the Reversing of a Judgment in any Action of Debt, or upon any Contract, in the Courts at *Westminster*, of the Counties Palatine of *Lancaster*, *Chester* or *Durham*, or of the Great Sessions in *Wales*; unless the said Plaintiff, with two sufficient Sureties (such as the Court shall like of) shall first be bound to the Party (for whom such Judgment is given) by Recognizance in the same Court, in double the Sum adjudged, to prosecute the said Writ of Error with Effect; and to pay (if the Judgment be affirm'd) all Debts, Damages and Costs

so

so adjudged; and all Costs and Damages for
delaying of Execution by the Writ of Er-
ror.

[See after.]

And by Statute 21 Jac. 1. 24. the Party
or Parties at whose Suit any Person shall
stand charged in Execution for Debts or
Damages recovered, their Executors or
Administrators may, after the Death of the
Person so charged in Execution, lawfully
sue forth new Execution against the Lands
and Tenements, Goods and Chattels, of the
Person so deceased, in like Manner as if
the Person deceased had never been taken
in Execution: Howbeit, this Act shall not
extend to Lands sold *bond fide* (after the
Judgment given), when the Money raised
thereupon is paid, or secured to be paid, to
Creditors in Discharge of due Debts.

Where a new
Execution
against Lands;
&c. if a Per-
son charged
in Execution;
dies.

By 13 Car. 2. Stat. 2. cap. 2. no Execution
shall be stay'd in any of the Courts men-
tioned in 3 Jac. 1. cap. 8. by Writ of Error,
or *Supersedeas* thereon, after Verdict and
Judgment thereupon, in any Action of
Debt upon 2 Edw. 6. for not setting out
Tythes, Action upon the Case, upon Pro-
mise for Payment of Money, Action *sur*
Trover, Covenant, Detinue and Trespass,
unless such Recognizance, as by the said
Statute is directed, be first acknowledged.

What other
Executions
not to be
stay'd by
Writ of Er-
ror, &c.

By Statute 16 & 17 Car. 2. cap. 8. no Exe-
cution shall be stay'd in the King's Courts
at *Westminster*, Courts of Record in the
Counties Palatine of *Lancaster*, *Chester* or
F *Durham*,

Where not by
Writ of Error
after Verdict
and Judg-
ment, &c.

A Review of all the Statutes,

Durham, or of the Great Sessions in any the Twelve Shires of *Wales*, by Writ of Error, after a Verdict and Judgment thereupon in any Personal Action, unless a Recognizance, according to 3 *Fac.* 1. 8. be first acknowledged: Nor shall Execution be stayed by Writs of Error in any Judgment after Verdict in Dower, or *Ejectione firmae*, unless the Plaintiff in such Writ of Error become bound to the Defendant in such Sum as the Court, to whom the Writ is directed, shall think fit: That if the Judgment be affirmed, or the Writ discontinued in his Default, or be nonsuit, he will pay such Damages and Sums of Money (to ascertain which, a Writ of Enquiry shall issue to enquire of the mean Profits and Damages by Waste done after the first Judgment) as shall be awarded, and Costs of Suit.

Writs of Error excepted.

That Writs of Error brought by Executors and Administrators, Actions on Penal Laws, (except on 2 *Ed.* 6. for not Setting out Tythes) Indictments, Presentments, Informations and Appeals, are excepted.

This Act is made perpetual by 22 & 23 *Car.* 2. *cap.* 4.

Where Death of either Party shall not be alledged for Error.

Note, That by Statute 30 *Car.* 2. *cap.* 6. 'tis enacted, That one Act made 17 *Car.* 2. *cap.* 8. (whereby amongst other Things, it was enacted, That in all Actions, real, personal and mix'd, the Death of either Party between Verdict and Judgment, should not be alledged for Error, so as such Judgment be

be entred within two Terms after such Verdict) shall be in force for seven Years, and to the End of the next Sessions of Parliament.

This Act is made perpetual by 1 Jac. 2. cap. 17.

Statutes of Amendment to prevent Fraudulent Conveyances.

HERE we will observe some Acts made to prevent *Fraudulent Conveyances*, &c.

Fraudulent Conveyances.

BY Statute 50 Ed. 3. 6. Fraudulent Assurances of Lands or Goods to deceive Creditors, shall be void; and the Creditors shall have Execution thereof, as if no such Gift had been made.

Assurances made to deceive Creditors, void.

By Statute 13 Eliz. 5. all Fraudulent Conveyances of Lands, Tenements, Hereditaments, Goods or Chattels, and all such Bonds, Suits, Judgments and Executions made to avoid the Debt or Duty of others, shall (as against the Party only, whose Debt or Duty is so endeavoured to be avoided, their Heirs, Successors, Executors or Assigns) be utterly void: Any Pretence, feigned Consideration, or, &c. notwithstanding.

Conveyances, &c. made to avoid Debts and Duties

Every of the Parties to such a Fraudulent Conveyance, Bond, Suit, Judgment or Execution, who being privy thereunto, shall wilfully justify the same to be done *bona*

Forfeitures upon such Fraudulent Conveyances.

A Review of all the Statutes,

Forfeiture of
the Clerk not
making due
Entry.

The said Clerk shall within the said six Months make Entry of every Statute to him delivered, as aforesaid, and shall indorse thereupon the Day and Year of such his Entry with his own Name, in Pain to forfeit for every Statute so brought unto him, and not entred, as aforesaid, 20 *l.* to be divided betwixt the Queen and the Prosecutor.

Fees for
Searching.

The Clerk shall take for the Search of a Statute but 2 *d.* for every Year's Search, in Pain to forfeit to the Party grieved twenty Times so much as he takes above; to be recovered in any Court of Record by Action of Debt, &c.

Proviso.

Provided, That this Act shall not extend to make good any Purchase made void by reason of any former Conveyance, so as the Party so making void the same, his Heirs or Assigns, were the first Day of this Parliament in actual Possession of the Lands, out of which any such Purchase, Lease, Charge or Profit was made. [*Vide Recognizances; and vide postea 74.*]

To prevent
Fraudulent
Conveyances, &c.

By Statute made *Anno 10 Anna Reginae*, for the more effectual preventing Fraudulent Conveyances, 'tis enacted, That all Estates and Conveyances made to any Persons in any Collusive Manner, to qualify them to give their Votes at Elections of Knights of the Shire (subject to Conditions to determine or reconvey such Estate), shall be taken against those Persons who executed the same, as free and absolute; And be holden by

by all such Persons to whom such Conveyance shall be made, freely acquitted from all manner of Trusts, Clauses of Re-entry, &c. between the said Parties, or in Trust for them: And all Bonds, Covenants, &c. for the Restoring thereof, shall be null and void: And every Person who shall make and execute such Conveyances, or being Privy to such Purpose, shall devise or prepare the same; or any Person who by Colour thereof shall give any Vote at any Election of Knights of a Shire, shall forfeit 40 l. with full Costs of Suit.

Amendment to prevent Frauds in Leases, Wills, &c.

BY 29 Car. 2. cap. 3. for Prevention of Leases, &c. Fraudulent Practices endeavoured to be upheld by Perjury, 'tis enacted, That all to be put in Writing. Leases, Estates, Interests of Freehold, or Terms of Years, or any uncertain Interests in or out of any Lands, Tenements or Hereditaments, not put in Writing, and signed by the Parties making them, or their Agents authorized by Writing, shall have no greater Effect than as Estates at Will, except Leases for 3 Years excepted. Leases not exceeding three Years, whereof the Rent shall be Two Thirds of the full Value.

No such Estates or Interests, not being Copyhold or Customary Interest, shall be assigned, granted or surrendered, unless by Deed in Writing, signed *ut supra*, or by Operation of Law. To be assigned by Deed, &c.

Executor,
how to be
charged on a
special Pro-
mise.

That no Action shall be brought, to charge an Executor on a special Promise, to answer Damages out of his own Estate, or to charge the Defendant upon any Promise to answer for the Debt or Miscarriage of another: Or upon an Agreement on Consideration of Marriage, or on any Contract or Sale of Lands, Tenements or Hereditaments, or any Interest concerning them, or on any Agreement not to be perform'd within a Year after the Making, unless such Agreement, or some Note thereof, be in Writing, and signed by the Party to be charged, or some other by him authorized.

Devifes of
Lands, &c.
how to be
made.

That all Devifes of Lands or Tenements shall be in Writing, and signed by the Party devising, or some other in his Presence, and by his Direction, and subscribed in his Presence by three or four Witnesses, or else shall be void.

How to be
revoked.

No such Devise in Writing shall be revocable, otherwise than by Writing, or by Burning, Tearing or Cancelling the same by the Testator, or in his Presence, and by his Consent.

Declarations
of Trusts.

That all Declarations or Creations of Trusts, shall be manifested by some Writing signed by the Party, or by his last Will in Writing, or else shall be void.

Of implied
Trusts, &c.

That Trusts resulting by Implication of Law, or transferred or extinguished by Act of Law, shall be as if this Statute had not been made.

That

That Assignments of Trusts shall be in Writing, signed by the Party assigning by such last Will, or else shall be of none effect.

What Lands may be delivered in Execution upon Judgments, Statutes or Recognizances : [See after Tit. Judgments, &c.]

Lands liable to Executions.

That no Heir chargeable by reason of any Trust made Assets by this Law, shall pay the Condemnation out of his own Estate. [See Tit. Judgments, &c.]

Heir, how chargeable.

That any Estate *pur auter Vie* shall be devisable by a Will, signed and subscribed as aforesaid : And if no such Devise be, it shall be chargeable in the Hands of the Heir, if it come to him by special Occupancy, as Assets by Descent, else it shall go to the Executors, and be Assets in their Hands.

Estate *pur auter Vie*, how devisable.

How Judgments shall be signed, and how they shall be Judgments only from such Signing, as against Purchasers : [See Tit. Judgments.]

Judgments to be signed.

That no Writ of Execution shall bind the Property of Goods, but from the Time of its Delivery to the Sheriff, Under-Sheriff, or Coroners ; who upon Receipt thereof (without Fee) shall indorse on the Back thereof the Day of the Month and Year when they received it.

Goods, how bound by Executions.

Also

Recognizances, how to be inrolled.

Also the Day of the Month and Year of the Inrolment of Recognizances, shall be set down in the Margin of the Roll : And no Recognizance shall bind Lands in the Hands of Purchasers *bonâ fide*, and for valuable Considerations, but from the Time of such Inrolment.

Concerning Contracts for Goods value 10 l. &c.

That no Contract for the Sale of any Goods for 10 l. or upwards, shall be good, except the Buyer actually receive Part of them, or give something in Earnest; or some Note thereof in Writing be made and signed by the Parties to be charged, or their Agents thereunto lawfully authorized.

[See more following concerning Frauds in Wills, &c. Page 78.]

Amendment as concerning Promissary Notes, or Notes promising Payment to the Party, or his Order, or to the Bearer, &c.

Promissary Notes by Stat. 3 & 4 Ann. cap. 9.

BY a Statute of 3 & 4 *Anna*, cap. 9. all Notes signed by any Person, &c. whereby any such Person, &c. shall promise to pay any other Person, &c. or Order or Bearer, the Money mentioned in such Note, shall be construed to be by Vertue thereof due and payable to such Person, &c. to whom the same is made payable.

Such Notes assignable.

And also such Note payable to such Person or Order, shall be assignable over in the manner Inland Bills of Exchange are: And the Person, &c. to whom such Money

is

is payable, may maintain an Action for the same, as they might upon such Bill of Exchange: And the Person, &c. to whom such Note so payable, or Order, is assigned or indorsed, may maintain an Action against the Person, &c. who signed, or any who indorsed the same, as in Cases of Inland Bills, and recover Damages and Costs of Suit: And in case of Nonsuit or Verdict against the Plaintiff and the Defendant, to recover Costs against such Plaintiff.

Such Actions to be brought within the Time appointed for bringing Actions by **Action, within what time.**
Stat. 21 Jac. cap. 16.

Proviso, That no Body Politick or Corporate, have Power to give out other Notes than they might before this Act.

[See more in the same Statute concerning Drawing, Accepting and Protesting Inland Bills. **Inland Bills.**]

And by an Act made *Anno 7 Annæ*, the aforesaid Act is continued, and made perpetual.

Again, By the said Statute 29 Car. 2. cap. 3. no Nuncupative Will shall be good where the Estate bequeathed exceeds 30 l. that is not proved by the Oaths of three Witnesses, that were present at the Making thereof, nor unless the Testator bid them, or some of them, to bear Witness, That such is his Will; nor unless it were made in the last Sickness of the Deceased, and in the House of **Nuncupative Wills, concerning them.**
Cautions to be observed.

A Review of all the Statutes,

of his Dwelling, or where he had been Resident ten Days, or more: Except where he was surprized from his own Home, and died before his Return.

Such Will to be committed to Writing within six Days.

That after six Months passed after the Speaking the pretended Testamentary Words, no Testimony shall be received of such Nuncupative Will, unless the said Testimony were committed to Writing within six Days after the Making of the said Will.

[See what Witnesses in Tit. Suits, viz. that are good Witnesses at Trials at Common Law. Vide ante 41.]

The Probate thereof.

That no Letters Testamentary, or Probate of any Nuncupative Will, shall pass the Seal of any Court, till 14 Days after the Testator's Decease: Nor shall any Nuncupative Will be proved, unless Process have issued to call in the Widow, or next of Kindred to the Deceased, to contest it, if they will.

Of repealing a Will in Writing.

That no Will in Writing of any Personal Estate shall be repealed by Words only, except the same be in the Life of the Testator committed to Writing, and read to him, and allowed by him, and that proved by three Witnesses.

Allowance to Soldiers, &c.

That Soldiers in actual Military Service, and Mariners at Sea, may dispose of their Personal Estates as before the making of this Act.

[See after Tit. Suits.]

That

That Ecclesiastical and other Courts, ^{Allowance to} having Right to the Probate of Wills, shall ^{Ecclesiastical} retain the same, but subject to the Directi- ^{Courts.} ons of this Act.

Note, That by Statute 4 & 5 *W. & M. cap. 2.* ^{Liberty to} Persons inhabiting, or who shall have any ^{the Province} Goods, within the Province of *York*, may by ^{of York to dis-} their last Wills dispose of all their Personal ^{pose of their} Estate as they shall think fit; and their ^{Estates by} Widows, Children, and other Kindred, ^{Will.} shall be barred to claim any Part of the Personal Estate in other manner than as by their Wills shall be appointed.

This Act not to extend to the Citizens of *Also to Che-* *York* and *Chester*, who are or shall be Free- ^{ster.} men of the said Cities, inhabiting within the same, or the Suburbs thereof, at the Time of their Death.

But by Statute 2 *Annæ, cap. 5.* this last ^{Repeal as to} Section, after the 26th of *March 1704.* so ^{York.} far as the same concerns the City of *York*, repealed; and enacted, That the Citizens of *York*, who are or shall be Freemen, may by their last Wills dispose of their Goods, Chattels, and Personal Estates; and this Act to be taken as a Publick Act of Parliam-ent.

[See after concerning Wales.]

For.

Further Amendment to prevent Frauds
by Wills, &c.

How Wills
shall be only
fraudulent
and void
against Cre-
ditors.

BY Statute 3 & 4 W. & M. cap. 14. all Wills concerning Lands, or any Rents, Profits, Term or Charge out of the same, whereof the Divisors shall be seised in Fee-simple in Possession, Reversion or Remainder, or have Power to dispose thereof, shall be deemed (only as against Creditors upon Bonds, or other Specialties, their Executors, &c.) to be fraudulent and void.

Action given
to such Credi-
tors.

And such Creditors shall have their Actions of Debt against the Heirs at Law, and such Devisees jointly; and such Devisees shall be chargeable for a false Plea, as any Heir should have been.

Of Devises of
Lands for
Payment of
just Debts.

Where there shall be any Devises of Lands for Payment of just Debts, or Childrens Portions, other than the Heir at Law, in Pursuance of any Marriage-Agreement made in Writing *bonâ fide*, before such Marriage, they shall be in force.

How an Heir
shall be an-
swerable for
his Ancestor's
Debt.

Where any Heir at Law shall be liable to pay the Debt of his Ancestor, in regard of any Lands descending to him, and shall make over the same before any Action brought, such Heir shall be answerable for such Debts to the Value of the Land made over: In which Cases all Creditors shall be preferred, as in Actions against Executors and Administrators; and Execution upon any Judgment so obtained, shall be taken out against such Heir to the Value of the Land,

Land, as if they were his own Debts; saving that Lands *bonâ fide*, aliened before the Action brought, shall not be liable to such Execution.

Where any Action of Debt upon a Specialty is brought against an Heir, he may plead *Riens per Discent* at the Time of the original Writ brought; and the Plaintiff may reply, That he had Lands from his Ancestor before the original Writ brought: And if, upon Issue join'd thereon, it be found for the Plaintiff, the Jury shall enquire of the Value of the Lands descended, and thereupon Judgment shall be given, and Execution awarded as aforesaid: But if Judgment shall be given against such Heir by Confession, without confessing the Assets descended, or upon Demurrer, or *Nil dicit*, it shall be for the Debt and Damages, without any Writ to enquire of the Lands.

How the Heir may plead, and how the Plaintiff may reply.

Devisees made liable by this Act, shall be chargeable as the Heir at Law by Force of this Act, though the Lands devised be aliened before the Action brought.

Devisees chargeable as the Heir.

This Act made perpetual by Stat. 6 & 7 W. 3. cap. 14.

Note, That by an Act made 7 & 8 W. 3. cap. 38. it is enacted, That it shall be lawful for any Persons inhabiting or residing, or who shall have any Goods and Chattels within the Principality of *Wales*, or Marches thereof, by their last Wills and Testaments, to give, bequeath and dispose of their Goods and Chattels, Debts and Personal Estates,

Concerning Wills made of Goods and Chattels in *Wales*.

A Review of all the Statutes,

Estates, to their Executors, or to such other Persons as the Testator shall think fit, as by the Laws and Statutes of this Realm may be done within any other Part of the Province of *Canterbury*, or elsewhere: And the Widows and Children, and other the Kindred of such Testators, shall be barred to claim any Part of the Goods and Personal Estate of such Testator's, otherwise than by the said Will is limited and appointed: Any Law, Custom or Usage to the contrary notwithstanding.

A Proviso for
saving of
Customs.

Provided nothing in this Act shall extend to take away any Right or Title which any Woman then married, or younger Children then born, might have to the reasonable Part of their Husband's or Father's Estate, by the Custom or Usage in *Wales*.

[Vide *Executors and Administrators*.]

Amendment for preventing Frauds in Judgments and Mortgages.

Concerning
Persons gi-
ving Judg-
ments, &c.

BY 4 & 5 *W. & M. cap 16*. If any Person shall borrow any Money, or for any other valuable Consideration for the Payment thereof, shall acknowledge or suffer to be entred against them a Judgment, Statute or Recognizance, and shall afterwards borrow any other Sum of any other Persons, or for other valuable Consideration, and for securing the Repayment or Discharge thereof, shall mortgage Lands to the

second

second, or other Tender or Tenders, or to any other Persons in Trust for him or them; and shall not give Notice to the Mortgagee of such Judgment, Statute or Recognizance in Writing, before the Execution of the said Mortgage, unless such Mortgagor or his Heirs, upon Notice given by the Mortgagee in Writing under Hand and Seal, attested by two or more Witnesses of such former Judgment, &c. shall within six Months pay off and discharge the same, and cause the same to be vacated or discharged by Record, such Mortgagor shall have no Benefit in Equity for Redemption of the Lands mortgaged.

Mortgagor prevented from Equity of Redemption.

If any Person who hath, or shall once mortgage Lands for Security of Money, or for other valuable Considerations shall again mortgage the same Lands, or any Part thereof, to any other Person, (the former Mortgage being in force;) and shall not discover to the second Mortgagee the first Mortgage in Writing, such Mortgagor shall have no Relief or Equity of Redemption against the second Mortgagee; but such second, or other Mortgagees, may redeem any former Mortgage.

The like if he make a second Mortgage, and do not discover the first.

This Act not to extend to bar any Widow of any Mortgagor from her Dower, who did not legally join with her Husband in such Mortgage, or otherwise lawfully exclude her self.

Dower excepted, and how.

[See after Tit. Bankrupts, and Tit. Frauds, and Fraudulent Conveyances.]

Amendment as to Judgments, Statutes and Recognizances.

How the Sheriff may deliver Trustees Estates upon Statutes, Judgments and Recognizances.

BY 29 Car. 2. cap. 3. Sheriffs, and other Officers to whom any Writ or Precept shall be directed at the Suit of any Person, upon any Statute, Judgment or Recognizance hereafter to be had or made, may deliver Execution of all Lands, &c. whereof others shall be seised or possessed in Trust for him against whom Execution is sued: Trusts in Fee-simple shall be Assets to Heirs.

Saving to an Heir.

Provided, That no Heir chargeable by reason of any Trust, made Assets by this Law, shall by reason of any Plea, or Confession of the Action, or suffering Judgment by *Nient dedire*, or any other Matter, pay the Condemnation out of his own Estate.

What shall be Assets by Descent in the Hands of an Heir, [*see Frauds.*]

The Day of signing Judgments, to be set down by the Officer.

That any Judge, or Officer of any of the Courts at *Westminster*, that shall sign any Judgments, shall (without Fee) set down the Day of the Month or Year of his so doing, upon the Paper or Record, &c. which he shall sign; which shall be entred on the Margin of the Roll of the Record of the said Judgment: And such Judgments, as against Purchasers, *bonâ fide*, for valuable Consideration, shall be Judgments only from such signing. [*Stat. eodem.*]

Amend:

**Amendment as to Entry of Judgments,
Statutes and Recognizances.**

Statute 4 & 5 W. & M. cap. 20. directs how Judgments shall be brought into the Courts of *King's-Bench*, *Common-Pleas* and *Exchequer*, to be doggetted by the Clerk of the Doggets of the *King's-Bench*, Clerk of the Essoins of the Court of *Common-Pleas*, and Master of the Office of Pleas in the *Exchequer*; the said Doggets to be kept in Books in Parchment, to be searched and viewed by all Persons at reasonable Times, paying for every Term's Search 4 *d.* and no more; on Pain that every Clerk of the Essoins of the Court of *Common-Pleas*, Clerk of the Doggets of the *King's-Bench*, and Master of the Office of Pleas in the *Exchequer*, and every other of the Clerks therein mentioned, shall for every Term in which he shall neglect his Duty, forfeit 100 *l.* one Moiety to the Party grieved, and the other Moiety to the Prosecutor.

Judgments,
how to be
brought into
the Court,
and dogget-
ted there.

No Judgment not doggetted as thereby directed, shall effect any Lands as to Purchasers or Mortgagees, or have any Preference against Heirs, Executors or Administrators, in the Administration of their Ancestors Testators, or Intestates Estates.

Invalidity of
Judgments
not dogget-
ted.

The Plaintiffs in every of the said Judgments shall pay to the Clerks of the Judgments for every Judgment entring 4 *d.* over and above the Fees now due.

This Act made perpetual by Stat. 7 & 8 W. 3. cap. 36.

G 2.

By

Act for a publick Registry of Judgments, &c. in Com' Midd'.

By an Act made 7 *Annæ Reginae*, for a Publick Office of Registry, That no Judgment, Statute or Recognizance (other than such as entred into in the Name of, and on the proper Account of her Majesty) obtained after the 29th Day of *Sept.* 1709. shall bind Hereditaments in the County of *Middlesex* but only from the Time that a Memorial thereof shall be entred at the new Publick Register's Office, expressing, in case of a Judgment, the Names of Plaintiffs, and Names and Additions of Defendants, the Sum recovered, and Time of Signing: And in case of Statutes and Recognizances, the Date, Names and Additions of Cognizors and Cognizees, Sums, and before whom acknowledged: The Party desiring the Entry shall leave with the Registers or Masters, to be filed, a Memorial of such Judgment, Statute or Recognizance, signed by the proper Officer, &c. who shall sign such Judgment, or in whose Office such Statute or Recognizance shall be inrolled; together with an Affidavit sworn before a Judge at *Westminster*, or Master in *Chancery*, that such Memorial was signed by such Officer, for signing whereof such Officer is to be paid one Shilling, and no more.

Master's Certificate.

The Register or Master is to make an Entry, and, if required, to give a Certificate, testified by two Witnesses, of every such Memorial, of a Judgment, Statute or Recognizance; and therein mention the Day, Book and Page in which they are registered.

The

The like Provision by Act made 5 *Annæ* *Reginæ*, cap. 18. of Judgments, Statutes or Recognizances, affecting Lands and Hereditaments in the West-Riding of the County of *York*.

The like for the West-Riding of *York*.

And the like for the East-Riding in the said County by Statute made *Anno sexto Annæ* *Reginæ*.

The like for the East-Riding.

[See these after, at large, in the Doctrine of Bargain and Sale, and Inrolment of Deeds.

And see before p. 12. in Judicial Proceedings, for the Inrolment of Grants made to the Lords of Manors.]

Inrolments of Grants.

Amendment concerning a Mandamus, &c.

BY an Act made 9 *Annæ*, for more speedy Proceedings upon Writs of *Mandamus*, and Informations in the Nature of a *Quo-Warranto*, &c. 'tis enacted, That where any Writ of *Mandamus* shall issue out of the Court of *Queen's-Bench*, Courts of Sessions of Counties Palatine, or Grand Sessions in *Wales*, relating to the Electing or Admitting of Mayors, Bailiffs, &c. within Cities, Towns Corporate, &c. such Persons, who by the Laws are to make a Return to such Writ, shall make it to the first Writ.

Mandamus and *Quo-Warranto*.

And as soon as the Return is made, any Person prosecuting such Writ, may plead to or traverse all or any the Facts contain'd in the Return; to which the Person making such Return shall reply, &c. And such Proceedings

Plea or Traverse to the Return.

ceedings shall be had therein, as might have been had if the Person suing such Writ had brought his Action on the Case for a false Return.

To be tried as
in an Action
on the Case.

And if any Issue shall be joined, the Person suing may try the same in such Place as an Issue joined in such Action of the Case should or might have been tried: And if a Verdict be found for the Person suing, &c. he shall recover Damages and Costs in such Action on the Case, to be levied by *Capias ad Satisfaciendum*, *Fieri facias*, or *Elegit*: And a peremptory Writ of *Mandamus* shall be granted without Delay; and if Judgment be given for the Person making such Writ, he shall recover his Costs of Suit.

Defaulter not
liable to ano-
ther Action.

If Damages be recovered against any Person by Vertue of this Act, for making such Return to such Writ, he shall not be liable to be sued in any other Action.

Informations
against Intrud-
ers into such
Offices, &c.

And if any Persons shall usurp, intrude into, or unlawfully hold or execute any such Offices or Franchises, the proper Officer in each Court, (with Leave of the Courts) may exhibit one or more Informations in the Nature of a *Quo-Warranto*, at the Relation of any Persons desiring to sue the same, and who shall be mentioned in such Information to be the Relators, and may proceed therein in such Manner as is usual in Cases of Informations in nature of a *Quo-Warranto*: And if it shall appear that the Right of divers Persons to the said Offices, &c. may properly be determined on one Information, the Courts may give Leave to exhibit one such Information against several Per-

sons;

sons; and such Persons shall appear and plead as of the same Term or Sessions in which the Information shall be filed, unless the Court shall give further Time; and the Person suing such Information, shall proceed with the most convenient Speed.

Where any Persons against whom such Informations shall be exhibited, shall be found guilty of an Usurpation, &c. the said Courts shall give Judgment of *Ouster* against such Persons of and from any the said Offices or Franchises, and fine them, and give Judgment, that the Relaters shall have Costs: And if Judgment be given for the Defendants, they shall recover their Costs against such Relaters.

Costs, &c. for Plaintiff or Defendant.

The said Courts may allow to the Persons to whom any Writs of *Mandamus* are directed, or against whom a *Quo-Warranto* is sued, such Time to make a Return, plead, reply, &c. as shall seem to them reasonable.

Time allow'd to make a Return, &c.

That after first Day of *Trinity-Term*, the Act 4 *Annæ*, for Amendment of the Law, &c. and all the Statutes of *Jeofails*, shall be extended to all Writs of *Mandamus*, and Informations in nature of a *Quo-Warranto*, and Proceedings thereon for any the Matters in this Act.

Acts of *Jeofails* extending to a *Mandamus*, &c.

That in Places where the Mayor, Bailiff, &c. or other Officer presides at the Election, and makes Return of Members to Parliament; no Person who hath been in such annual Office for one whole Year, shall be capable of being chosen into the same Office for the Year ensuing: And where

Concerning Officers to return Members of Parliament.

such Officer is to continue for a Year, and until some other Person shall be sworn into such Office; if he shall obstruct the choosing another Person to succeed into such Office, he shall forfeit 100 *l.* with Costs of Suit, one Moiety to the Queen, and one Moiety to the Prosecutor.

Amendment relating to Partition between Cohairs, &c.

How the
Courts may
proceed to
examine the
Demandant's
Right, &c.

BY Statute 8 & 9 *W. 3. cap. 31.* enacted, That after Process of *Pone*, or Attachment return'd upon a Writ of Partition, and Affidavit made of due Notice given of the said Writ of Partition to the Tenant or Tenants to the Action, and a Copy thereof left with the Occupier; or in the Tenant's Absence to the Wife, Son or Daughter (of the Age of 21) of the Tenant in Possession of the Manors, Lands, &c. whereof the Partition is to be, (unless the Tenant in Possession be Demandant in the Action) at least 40 Days before the Return of the *Pone*, or Attachment, if there be no Appearance entered in 15 Days after the Return in the Court where such Writs are returnable; Then the Demandant having entered his Declaration, the Court may proceed to examine the Demandant's Right and Part; and according as they shall find the same to be, they shall for so much give Judgment by Default, and award a Writ to make Partition: Which Writ being executed after eight Days Notice to the Occupier, and re-

turn'd,

turn'd, and thereupon final Judgment entered, the same shall be good, and conclude all Persons whatsoever, although all Persons concerned are not named in the Proceedings, nor the Title of the Tenants truly set forth.

Provided, That if any Person concern'd, against whose Right such Judgment by Default is given, shall within one Year after, (or in case of Infancy, Coverture, *Non sanæ Memoriae*, or Absence beyond Seas, within one Year after such Inability removed) move the Court where such Judgment is entered, and shew good Matter in Bar of such Partition, then the Court may suspend, or set aside such Judgment, and admit the Tenant to appear and plead, and the Cause shall proceed as if no Judgment had been given: And if the Court shall adjudge for the first Demandant, then the first Judgment shall stand confirmed, and the Person so appealing shall pay Costs: Or if within such Time, the Persons concerned shall shew to the Court an Inequality in the Partition, the Court may award a new Partition to be made in Presence of all Parties concern'd (if they will appear:) Which second Partition return'd and filed, shall be good and firm against all Persons (except as before) for ever.

Saving to
Persons upon
a Judgment
by Default,
and to In-
fants, Feme
Coverts, &c.

That no Plea in Abatement shall be admitted in any Suit for Partition; nor shall the same abate by reason of any Tenant.

No Abate-
ment in Par-
tition.

That

How the Under-Sheriff may make a Partition.

That when the High-Sheriff cannot conveniently be present at the Execution of any Judgment in Partition, the Under-Sheriff, in Presence of two Justices of the Peace of the County, may proceed to the Execution of the same by Inquisition, in due Form of Law: And the High-Sheriff shall make the same Return, as if he were personally present.

How the Under-Tenants may continue their Tenancies.

After Partition made, return'd and filed, the Under-Tenants shall continue in their Tenancies, as before they were divided, and set out to the respective Landlords, under the same Rents and Covenants, &c. So also where any Demandant is Tenant in actual Possession to the Tenant to the Action for his Part or Proportion, or any Part thereof.

Officers remit to pay the Demandant Costs and Damages.

That the respective Sheriffs, Under-Sheriffs and Deputies, and Justices of Peace, (in case of Disability in the High-Sheriff) shall give due Attendance to the Execution of such Writ of Possession, or every of them, to pay the Demandant Costs and Damages not exceeding five Pounds; for which the Demandant may bring his Action in any of the King's Courts at *Westminster*, wherein no Essoin, &c.

Demandant to pay Officers their Fees.

And in case the Demandants shall not pay the Sheriffs, &c. such Fees they demand, the Court shall award what each Person shall receive.

See before Tit. Ability and Non-ability;

1. As to the Examination of Persons presented to Benefices.

2. As

2. As to Coparceners presenting by Coparceners
Turns, upon a Partition made, according to present by
to a late Act made *Anno 7 Annæ Reginae.* Turns.

Appeals, &c.

AN Appeal is where one hath done a Appeal,
Robbery or Murder, or Mayhem; what.
then in case of Murder, the Wife or Heir
of him that was murdered; so in Robbery
or Mayhem, the Party robbed or may-
hem'd may have an Appeal against the
Parties offending, and the Accessaries there-
unto.

And by 4 Co. 47. b. all Principals, and Principals
Accessaries before and after, must be join'd and Accessa-
in one Appeal. ries must be
join'd.

By Statute 3 H. 7. 1. *Pars inde*, every Co- Where upon
roner, upon View of the dead Body, shall the Coroner's
enquire of the Person that hath done the Inquest the
Death or Murder; also of their Abettors Proceedings
and Consenters, and who were present shall not tar-
when it was done; and the Names of the ry for Want
Persons so present and found, shall inroll of an Appeal,
and certify.

Here the Offender and his Accessaries
being indicted, shall be also arraigned at
any Time within the Year at the King's
Suit; and the Proceeding thereof shall not
tarry for any Appeal to be prosecuted
within the Year, as hath been heretofore
used.

Yet the Principal or Accessary are not to be acquitted, &c.

Albeit the Principal or Accessary be acquitted within the Year and Day, yet shall not the Justices suffer them to go at large; but either remand them to Prison, or let them be bailed, until the Year and Day be out: And whether they be attainted or acquitted, yet the Wife or next Heir of the Slain, may within the Year and Day (the Benefit of Clergy being not before had) prosecute their Appeal against them, any such Attainder or Acquittal notwithstanding.

How the Wife or Heir may commence their Appeal.

The Wife or Heir may commence their Appeal in proper Person at any Time within the Year, before the Sheriff and Coroners of the County where the Offence was done, or before the Justices of the *King's Bench*, or Gaol-delivery: And in any such Case (save only where Battel lieth) the Appellant (after the Suit so commenced) may appoint an Attorney to prosecute it.

Cautions as to an Heir.

Note, If the Appeal be by the Heir, it must be in *propria Persona* (if of full Age); but if not, he must be admitted by the Court to sue *per Custodem* or *Guardianum*, and then the Guardian must appear in Court. *Pasch. 11 Will, B. R.*

Non-suit after Appearance.

A Non-suit in an Appeal after Appearance, is conclusive; but before an Appearance, it is not. *Hill. 7 Will Regis, B. R.*

If Defendant plead in Abatement, yet he ought to plead over.

If in an Appeal the Defendant pleads in Abatement of the Writ, which he must do in *propria Persona*, and not by Attorney, his best Way is to plead also Not guilty; for

for otherwise, if the Writ be adjudged good, it is peremptory, and he shall not be permitted to answer over, but shall be condemned upon the Writ. *Shower's Rep.* 47.

It's said, if one be indicted of Murder, and convicted of Manslaughter, and the Court will not call him to Judgment, but continue him over to another Gaol-delivery, with a *Curia advisare vult*; if an Appeal of Murder be brought, he may plead his Conviction, and his being a Clerk ready to read, if the Court would have allow'd him. *Keyling's Rep.* 107.

One indicted of Murder, and convicted of Manslaughter.

[See after.]

Again it's said, That if upon an Indictment of Murder there is a Conviction of Manslaughter, and at the same Gaol-delivery the Wife or Heir put in an Appeal, it is just for the Court to call the convicted Person to Judgment upon the Indictment; and to allow him his Clergy, before he be put to answer the Appeal; and then he may plead the Conviction and Clergy in Bar of the Appeal. *Idem* 107, 108.

Also, that where a Person is convicted of Manslaughter upon an Indictment, and is allowed the Benefit of his Clergy, and his reading as a Clerk, that this bars the Appellant of his Appeal of Murder. *Keyling's Rep.* 94.

And by the same Book, and fol. 107. when the Indictment and Conviction of Manslaughter and Appeal, are removed into the *King's-Bench*, he says, That Court is

When the Indictment, Conviction and Appeal are removed.

A Review of all the Statutes,

is bound to call the Party to Judgment, and to allow him his Clergy if he prays it, and order him to be burnt in the Hand.

If an Indictment and Appeal be at the same Assizes, which shall be first tried.

Also, that when, at the same Assizes, there is an Indictment and an Appeal, the Appeal shall be proceeded upon, if desired by the Prosecutor, because the Statute of 3 Hen. 7. cap. 1. doth not forbid it; and if the Appellant be ready, he shall have the Preference: Yet if the Court try the Appellee upon the Indictment, before he be tried upon the Appeal, and he be convicted of Manslaughter, and hath his Clergy, it is said to be a good Bar to the Appeal.

Appeal by a Woman.

By *Magna Charta*, cap. 34. 9 H. 3. no Man shall be taken or imprisoned upon the Appeal of a Woman, for the Death of any other than her Husband.

Accessory in Appeal.

By *Westm.* 1. cap. 14. 3 Ed. 1. the Accessary in an Appeal shall not be outlawed before the Principal be attainted. However, none shall intermit to commence their Appeal at the next County, as well against the Accessary, as against the Principal; but the *Exigent* against those shall remain, until those be attainted by Outlawry or otherwise.

Appeal, when and how to be sued forth.

By Stat. of *Glocest.* cap. 14. 6 Ed. 1. cap. 9. if the Appealor declare the Deed, the Year, the Day, the Hour, the Time of the King, and the Town where the Fact was done, and with what Weapon, the Appeal shall stand, and shall not be abated for Default of fresh Suit, so that he sue within a Year and a Day after the Fact.

By

By *Westm.* 2. 12. 13 *Ed.* 1. Upon a false Appeal by Malice, the Appellor shall suffer Imprisonment upon a false Appeal. a Year's Imprisonment, make Fine to the King, and recompence Damages to the Appellant at the Discretion of the Justices.

When the Appellor is not able to satisfy Damages, and an Abbetor (through Malice) is also found by the same Inquest, such Abbetor shall also be punished by Imprisonment, and Restitution of Damages, as before. Punishment of an Abbetor.

By Statute of *Appeals*, 28 *Ed.* 1. when any are appealed by Provers, the Sheriff shall by the King's Writ, under the Testimony of the Justices that delivered those Provers, bring such Appeals to the Gaols where the Provers or Appellors are kept, to answer before the same Justices; and if the Appealees will be tried by the County, the Sheriff shall also, by a judicial Writ from the same Justices, cause an Inquest to appear. If Persons be appealed by Provers.

The Sheriff, and others (in whose Custody such Appellors are kept) shall receive such Appealees without Contradiction.

By Statute 1 *H.* 4. 14. all Appeals of Things done within the Realm, shall be tried by the Laws thereof; and of those done out of the Realm, by the Constable and Marshal of *England* for the Time being. Appeals, how to be tried.

[See a large Collection of Cases and Authorities upon this Title of Appeal, relating to the several Branches thereof, in D'Anvers's *Gen. Abr.* from fol. 488. to 500.

Appeal

Appearances.

Entry by Filizer, &c.

BY Statute 10 H. 6. 4. No Filizer, Exigenter, or other Officer whatsoever, in any Suit shall make Entry, that the Plaintiff, *obtulit se in propria Persona sua*, unless the Plaintiff, before such Entry made, doth (indeed) appear in proper Person before some of the Justices of the Place where the Plea depends, and (either by himself, or some other credible Person of his Council) make Oath, That he is the same Person in whose Name that Suit is prosecuted.

This Act to continue to the next Parliament.

By Statute 18 H. 6. 9. the Stat. of 10 H. 6. 4. is made perpetual.

Forfeiture.

No Officer contained in the Statute of 10 H. 6. 4. shall do to the contrary thereof, in Pain to forfeit 40 s. to the King for every Time that he shall be attainted thereof by due Examination of any of the Justices, before whom the Entry or Record is.

Attorney's Warrant.

Every Attorney who hath not his Warrant entred upon Record, in all Suits wherein Process of *Capias* and *Exigent* are awardable, the same Term in which the *Exigent* is awarded, or before, and is thereof attainted by like Examination, for every Time he so offendeth shall incur the Pain aforesaid.

[See before in Actions Popular, in that Part thereof relating to Judicial Proceedings.]

And

And observe, That in Ejectment, Judgment against the casual Ejector will be set aside, if Common Bail be not filed in fourteen Days after Appearance. Adjudged *Tin. 4 W. & M. per Cur'.*

And in all Cases where Process may issue forth to take the Body of the Person, if an Appearance only, and not Bail is required, there every such Person must, upon an Arrest, cause Common Bail to be filed; which is an Appearance upon Record. *1 Lilly's Reg. 64.*

Where Common Bail is an Appearance on Record.

[See after Tit. Bail.]

And note, There are but 4 several Ways by which a Defendant can appear, viz. Either in *propria Persona*, *per Attornatum*, *per Guardianum*, or *per proximum Amicum*; and regularly the Two first are the common Ways, and the other two are Privileges given to Infants under Age.

Several Ways of appearing.

Arbitration.

Vide ante Amendment as to Arbitration, &c. pag. 45, &c.

Arrests.

BY *Westm. 1. cap. 34. 3 Ed. 1.* None (except the King's Ministers) shall within a Liberty arrest any Person passing through the same, and holding nothing thereof, for any Contracts, Covenants, or Trespasses made or done out of such Liberty, in Pain

Of Arresting within a Liberty.

H

to

A Review of all the Statutes,

to pay double Damages to the Party grieved, and a Fine to the King.

Of arresting
Clerks of holy
Church.

Simile.

What Surety
for an Appea-
rance, if the
Cause of Acti-
on be not ex-
pressed.

Appearance
by Attorney,
discharges
Bail-Bond.

By Statute 58 *Ed. 3. 5.* none shall arrest Clerks, or other Persons of holy Church doing Divine Service, in Pain of grievous Forfeiture, so that Collusion be not found in any such Persons or Clerks.

By Statute 1 *R. 2. 16.* none shall arrest such Persons or Clerks doing Divine Service, in Pain of Imprisonment, and to be ransomed at the King's Will.

By Statute 13 *Car. 2. cap. 2. Stat. 2.* no Person arrested upon any Writ out of the *King's-Bench* or *Common-Pleas*, upon which he is bailable by the Statute of 25 *H. 6. c. 10.* shall be forced to give Security, or enter into Bond with Sureties for his Appearance at the Day in such Writ, Bill or Process specified in any Sum above 40 *l.* unless the Cause of Action be expressed particularly: And where such Cause of Action is not expressed, all Sheriffs and Officers shall let to Bail Persons arrested upon 40 *l.* Security for their Appearance, according to the Statute 23 *H. 6.*

Upon Appearance by Attorney in Term entred in Court where the Process is returnable, the Bail-Bond shall be satisfied and discharged; and after such Appearance, no Amerciament shall be estreated against any Sheriff or Officer, for Want of Appearance: And if the Plaintiff in some Personal Action declare not before the End of the next Term after Appearance, Nonsuit may be entred against him, and Costs taxed and levied, as in the Statute of 28 *H. 8. c. 15.*

Proviso,

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Reg. 63.*

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Rep. 69.*

Proviso this Act extend not to *Cap' Utlagatum*, Attachments upon *Rescous*, Attachments of Privilege, or any other Attachment for Contempt whatsoever, issuing out of either of the said Courts. Exception.

By 29 Car. 2. cap. 7. no Writ, Process, Order, Warrant, Judgment or Decree, except in Cases of Treason, Felony, or Breach of the Peace, shall be served upon the Lord's Day: Which if they be, all shall be void, and the Person so serving shall be liable to the Suit of the Party grieved, and answer Damages; as if he had done the same without Writ, Process, Warrant, Order, Judgment or Decree. Arrests and Process on Sundays, to be void.

And note, It is not sufficient for a Bailiff (who hath a Warrant against a Man) to say, *I arrest you at the Suit of A. B. Plaintiff*, in the Writ: But the Officer must actually lay hold on him, or touch him, otherwise 'tis no Arrest. *Trin. 3 Annæ Reginae, 1 Lilly's Reg. 63.* What shall, or shall not, be accounted an Arrest.

Yet an Arrest in the Night is lawful, as well at the Suit of the Party, as at the Suit of the King. *9 Rep. 65. b. 66. a.* Arrest in the Night.

That a sworn and known Bailiff need not shew his Warrant, although the Party demands it; neither is any other Bailiff bound to shew his Warrant, unless demanded. *Rep. 69. a. b.* Arrest by a known Officer.

Authority to
be shewed, if
required.

But *vide* 2 Lill. Reg. 341. That a Sheriff, or any Person by his Authority, who makes an Arrest, ought to shew at whose Suit, and out of what Court, and for what Cause he arrests him, and when returnable, (especially if required.) 6 Rep 54. a.

[See after Tit. Sheriff.]

Arrest in a
Stranger's
House.

How to justify an Entry into a Stranger's House, to make an Arrest. *Lutw.* 1432, 1433.

Vexatious
Arrests.

Also where an Action will lie for vexatious Arrests in Inferiour Courts. *Ibid.* 1571, 1572.

Writ delivered to one in
Custody of
the Sheriff.

Where a Man is in the Sheriff's Custody by Process, and another Writ is delivered to him to take the Body in Custody, he is presently in his Custody in Judgment of Law, altho' not actually arrested; tho' it is not properly a *Capias*, but a *Salvo Custodini facias*. 5 Rep. 89. a.

Persons arrested, not to
be carried to
Taverns, or
Spunging-
houses, unless
required, &c.

By Statute 22 & 23 Car. 2. cap. 2. Sect. 9. No Sheriff, Bailiff, or other Officer, shall carry any Person under Arrest to any Tavern, Ale-house, or other publick Drinking-house, without his Consent; so as to charge him with any Beer, Ale, Wine, Tobacco, or other Thing, but what he shall freely call for on his own Accord: Nor shall demand or receive more from him for such Arrest, or Waiting, than by Law ought to be, (until an Appearance procured, Bail found, or Agreement with the Adversary, or sent to the County Gaol) nor shall take

or

or exact any more for keeping such Person out of Prison, than what he shall of his own voluntary Accord truly give; nor shall take any more for Lodging than what is reasonable, or what shall be adjudged to be so by the next Justice of Peace, or at the next Quarter-Sessions.

The Statute 8 & 9 *W. 3. cap. 26.* was made for the more effectual Relief of Creditors in Cases of Escapes, &c. and how the Plaintiff may retake a Prisoner escaping out of Execution by a new *Ca' Sa'*. Arrest after an Escape.

The Statute 1 *Ann. cap. 6. Sess. 2.* was made for taking up of Prisoners (escaping out of the *Queen's-Bench* and *Fleet*) by Vertue of an Escape-Warrant, to be granted upon Oath by a Judge of the Court where such Action was entred, &c. and to be in force all over *England*: And all Officers are commanded to obey it. Simile by an Escape-Warrant 1 *Ann. cap. 6.*

And note, That about 3 *Ann.* a Prisoner being taken upon a *Sunday* by Vertue of the late Act, it was moved to discharge him; but the Court would not order his Release, but left him to bring his *Audita Querela* if he thought fit, whereby the Cause might come judicially before them. *Vide 2 Lilly's Reg' 252.* If such Escaper be taken on a *Sunday*.

Also, that a Prisoner who is in the Rules, or out upon his Day-Rule, and about his Business, *viz.* instructing of his Counsel, or consulting with his Creditors, cannot be taken up upon an Escape-Warrant; but if he

A Review of all the Statutes,

he goes into the Country, or to Plays, or any such Sort of Place for his Diversion or Idleness, he may be taken up.

[See after Prisoners, Sheriffs, &c. See also Constable.]

Justification
for an Arrest.

Note, That where the Defendant in Battery justified by *Molliter manus imposuit*, to arrest the Plaintiff, and 'tis query'd whether this Justification was good or no. 3 Lev. 404.

Assault.

Assaulting a
Parliament-
Man's Ser-
vant, finable :

BY Statute 5 H. 4. 6. if any assault the Servant of a Knight or Burgeſs of Parliament, Proclamation ſhall be made that he render himſelf into the *King's-Bench* within a Quarter of a Year; which if he do not, he ſhall be attainted of the Fact, and pay double Damages to the Party grieved, to be taxed by the Diſcretion of the Juſtices, or by Inqueſt, if need be; and beſides, ſhall make Fine and Ransom at the King's Will.

Or of any
Member of
Parliament,
or King's
Council, fina-
ble.

By Statute 11 H. 6. 11. the like Proviſion is made againſt Assaults made upon any Member of either Houſe of Parliament, or of any other Council aſſembled by the King's Command: Only, if it be not Term-time, he ſhall then appear the firſt Day of the Term following that Quarter, and upon Appearance ſhall be proceeded againſt as before.

Alſo

Also by an A&t made *Anno 9 Annæ Reginae*, **Assaulting a**
 against such as make an Attempt on the **Privy-Coun-**
 Life of a Privy-Councillor, it is enacted, **cellor, Fe-**
 That if any Person shall attempt to kill, **lony.**
 assault, strike or wound any of Her Ma-
 jesty's Privy-Council in the Execution of
 his Office, in Council, or in any Commit-
 tee of Council, being convicted thereof in
 due Form of Law, he is thereby declared
 to be a Felon, and shall suffer Death as in
 the Cases of Felony, without Benefit of
 Clergy.

Note, To lay Hands gently upon another, **What is a**
 (not in Anger or Passion) is no Battery to **Battery, and**
 ground an Action of Trespass and Assault **what not.**
 upon; for the Law will not presume the
 Party is thereby damnified. 1 *Lill. Reg.*
 177.

Baron and Feme brought Battery for **By Baron and**
 beating of the Wife, and taking of the **Feme, for**
 Husband's Goods: And it was held naught, **beating the**
 because for the Goods it ought to have been **Wife, and**
 only by the Husband. *Ibid.* and 1 *Lev. 3.* **taking of the**
Husband's
Goods.

Assets.

ASSETS are of two Sorts, *viz.* Assets **Assets Real**
 Real, and Assets Personal: Assets Real **in the Hands**
 are where a Man is seised of Lands in Fee- **of the Heir.**
 simple, and dies so seised, the Land which
 descends to his Heir, are called *Assets Real*;
 but Lands which come to the Heir by Pur-
 chase, shall not be Assets.

Assets Personal in the Hands of an Executor.

And where a Man dies possessed of any Personal Estate, the Goods which come to the Hands of the Executor, are said to be Assets Personal.

In any Place.

Also an Executor shall be charged with Assets in any Part of the World. 6 Rep. 47. b.

Assets descending from Cestuy que Trust.

And by the 9th of Car. 2. cap. 3. Lands of Cestuy que Trust (that is, he for whom others stand intrusted) shall be as liable to Executions, as if he himself had been seized; so likewise if he dies, and leaves Land to descend to his Heir, they shall be Assets by Descent.

[See Tit. Uses.]

Reversion upon an Estate Tail.

That a Reversion depending upon an Estate-Tail is not Assets, because the Tenant in Tail may bar it whenever he pleases. 6 Rep. 58. b.

[See in Tit. Fraud, 3 & 4 W. & M. c. 14. for Relief of Creditors, against fraudulent Devises, &c.]

Assets to Part of the Debt upon a Plene Administravit.

Assets are found to Part of the Debt upon a Plene Administravit; yet Judgment must be of the whole Court, *de Bonis Testatoris tantum*, &c. viz. the Common Judgment against an Executor: And upon producing of the *Possea*, the Sheriff will return upon the *Fieri facias*, *de Bonis Testatoris a Devastavit* for so much as is found upon the Verdict. 8 Rep. 134. 1 Lill. Reg. 83.

[Concerning the Doctrine of Assets in most Particulars, vid. D'Anvers's Abr. 577, &c. Tit. Assets, &c.]

Note,

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[S

BY R without strain ments Statute

Assignment of Bail-Bonds, &c.

Note, **B**Y 4 & 5 *Ann. cap. 16.* the Sheriff, or other Officer, who taketh Bail upon the Arrest, at the Request and Costs of the Plaintiff in such Action or Suit, or his lawful Attorney, shall assign to the Plaintiff in the Action, the Bail-Bond, or other Security taken from such Bail, by endorsing the same, and attesting it under his Hand and Seal, in the Presence of two or more credible Witnesses, which may be done without any Stamp, provided the Assignment so endorsed be duly stamp'd before any Action be brought thereupon: And if the Bond, &c. become forfeited, the Plaintiff after the Assignment may bring an Action thereupon in his own Name; and the Court by Rule may give Relief to the Plaintiff and Defendant in the Original Action, and to the Bail upon the Bond, &c. And their Rules shall have the Nature and Effect of a Defeazance to such Bail-Bond, or other Security for Bail.

Concerning
Assignment
of Bail-Bonds.

[See after Title Bail.]

As to other Assignments.

BY 32 *H. 8. cap. 34.* if an Assignee of a Reversion brought Covenant, it lay without Attornment, but he could not distrain *sans* Attornment: But now Attornments are taken away by a Clause in the Statute 4 & 5 *Ann. cap. 16.* for the Amendment

Assignee of
a Reversion,
brings Cove-
nant.

ment of the Law, for which see before Tit. *Amendment*.

Assignment
of many
Breaches in
Covenant.

Formerly but one Breach could be assigned for the Breach of a Penalty of a Bond to perform Covenants ; but now, by the late Statute 8 & 9 *W. 3. cap. 10.* the Plaintiff may, in an Action upon such Bond, assign as many Breaches as he pleases.

[*Vide Conditions.*]

Tenant by
Elegit.

What Assignments by Tenant by *Elegit* shall be good, or not. *Shower's Rep.* 290, 291.

Of Trusts
assigned.

That all Assignments of Trusts, &c. must be in Writing, by Statute 29 *Car. 2. cap. 3. vide ante* 71, 73.

Of Promissory Notes,
&c.

How Promissory Notes, and Inland Bills, are assignable by Statute 3 & 4 *Annæ, c. 9. vide ante* 74.

Of transferring Statutes-
Merchant,
Bonds, &c.

Note, That a Statute-Merchant or Staple, or Bond, &c. cannot be assigned over to another, so as to vest an Interest, whereby the Assignee may sue in his own Name, but they are every Day transferred by Letter of Attorney, &c. *Mich. 22 Car. B. R. 1 Lill. Reg. 47.*

Favour given
to Assignees
by Letter of
Attorney.

Also the Court favours Assignees by Letter of Attorney, to recover to their own Use, in which there is a Covenant not to revoke : As where a Bond is assigned over, with a Letter of Attorney therein to sue, and a Covenant not to revoke, but that the Money shall come to the Use of the Assignee,

signee, although the Obligee be dead ; yet the Court will not stay Proceedings upon the Bond in the Obligee's Administrator's Name, though prosecuted without his Consent.

For that those Assignments to receive the Money to the Assignee's own Use, with Covenants not to revoke, and also with a Letter of Attorney in them, although they do not vest an Interest ; yet have so far prevailed in all Courts, that the Grantee hath such an Interest, that he may sue in the Name of the Party, his Executors or Administrators. *Pasch. 12 W. B. R. Deering and Carrington.* The Reason thereof.

Affise and Affizes.

A Writ of Affize was formerly said to be *festinum Remedium* (though now seldom used) ; and by Statute 13 Ed. 1. it lies for Tenant by *Elegit*, and by 2 Inst. 396, 397. for Tenant by Statute-Staple, Houses, Lands, Rents, Offices ; and by 27 Ed. 3. cap. 9. for Tenant by Recognizance.

[See the many Divisions thereof in D'Anvers's Gen. Abridg. fol. 578, &c. Tit. Affise. See also 1 Lilly's Reg. Tit. Affize and Affizes.]

But now by an Act made 7 & 8 W. 3. for the Ease of Jurors, and better regulating of the Ease of Juries. it is enacted, That if the Plaintiff shall not proceed to Trial of the Issue at the first Affizes, after the *Teste* of the Writ of *Habeas Corpora*, or *Distringas*, with a *Nisi prius* ;

A Review of all the Statutes,

prius ; That then, and in all such Cases, (other than where Views by Jurors shall be directed) the Plaintiff or Demandant, whenever he shall think fit to try the said Issue at any other Assizes, shall sue forth
Venire de novo. and prosecute a new Writ of *Venire facias*, directed in this Form :

Quod de novo Venire facias coram, &c. duodecim liberos & legalis Homines de Vicin' de (A.) quorum quilibet habeat decem librat' Terr' Tene-mentor'um vel reddit' per annum ad minus per quos, (&c.) Et qui nec, (&c.)

After the ancient Manner : That is to say, the Writ is to be in the same Form as the first, only adding the Words, *De novo*.

*Hab' Corp', and
Distringas.*

Which Writ being duly return'd and filed, a Writ of *Habeas Corpora*, or *Distringas*, with a *Nisi-prius*, shall issue thereupon for the ancient Fees : As in the Case of a *Pluries Habeas Corpora*, or *Distringas*, with a *Nisi-prius* ; upon which the Plaintiff or Demandant shall and may proceed to Trial : As if no former Writ of a *Venire facias* had been prosecuted or filed in that Cause ; and so *toties quoties*, as the Case shall require.

*Trial by
Proviso.*

And if any Defendant or Tenant, shall be minded to bring the Issue to Trial by *Proviso*, (when by Course he may) he may of the issuable Term next preceding such intended Trial to be had at the next Assizes, sue out a new *Venire facias* to the Sheriff, in Form aforesaid by *Proviso*, and prosecute the same, by Writ of *Habeas Corpora* or *Distringas*, with a *Nisi-prius*, as tho' there had

*Hab' Corp', and
Distring', with
Nisi-prius.*

had not been any former *Venire facias* sued out or returned in that Cause ; and so *toties quoties*, as the Matter shall require.

Note, That in Prohibitions it's said, that either Party may carry down the Record.

Also note, If you carry in your old *Habeas Corpus*, you may save 13 d.

The former Act also provides, that Jurors to serve upon the *Tales* shall be Freeholders or Copyholders of the County, and return'd upon some other Pannel to serve at the said Assizes, and attending in Court, and may be challenged by Plaintiff or Defendant, Demandant or Tenant, as if they had been impannelled upon a *Venire facias* to try the Issue.

And by a late Act 4 & 5 Ann. cap. 16. for Amendment of the Law, 'tis enacted, That every *Venire facias* for the Trial of any Issue in any Action or Suit, in any of Her Majesty's Courts of Record at *Westminster*, shall be awarded of the Body of the proper County where such Issue is triable : But this Act is not to extend to Appeals, Indictments, Presentments of Felony or Murder, or Treason, nor to Penal Statutes.

Ve' fa' of the Body of the County.

[See after Tit. Jurors, &c.]

Assumpsits and Promises.
Vide Frauds, &c.

Attach-

Attachment.

Attachment
for Non-per-
formance of
an Award,
made by Rule
of Court.

THE Court will not grant an Attachment upon an Award, according to Statute 9 & 10 *W. 3. cap. 15.* without Personal Service, with a Copy of the Award, and a Demand of the Money awarded by the Person who is to have the Money, or some other Person who hath a good Authority from him to receive it, and he then neglects or refuses Payment of it. *1 Lill. Reg. 40.*

If made by
some of the
Jury.

Where an Attachment lies for Non-performance of an Award made by some of the Jury, upon a Reference to them. *Ibid. Hill. 8 W. B. R.*

For Non-pay-
ment of
Costs.

How to proceed to procure an Attachment for Non-payment of Costs upon a Rule of Court. *Ibid. 41.*

For not re-
turning a
Mandamus.

No Attachment upon a *Mandamus* till after an *Alias* and *Pluries*, for the not making of a Return, unless the Court think fit. *Ibid. Pasch. 12 W. B. R.*

Attaint.

Attaint,
what it is.

Attaint, is a Writ that lies where a false Verdict in a Court of Record, upon an Issue join'd by the Parties, is given: And if the Jury are convicted, they are stain'd with Perjury, and become infamous for ever; for the Judgment at the Common Law is very severe, *viz.*

1. Quod

1. *Quod amittant liberam Legem imperpetuum.* The Judgment therein at Common Law.
2. *Quod forisfaciant Bona & Catalla sua.*
3. *Quod Terre & Tenementa sua in manus Domini Regis capiantur.*
4. *Quod Uxores & Liberi extra Domus suas ejicerentur.*
5. *Quod Domus suæ prostermentur.*
6. *Quod Arbores suæ extirpentur.*
7. *Quod Prata sua arentur.*
8. *Quod Corpora sua Carceri mancipientur.*

So odious was Perjury in the Eye of the Law.

1. He in the Reversion shall have an Attaint or Writ of Error, upon a false Verdict found, or an erroneous Judgment given against the particular Tenant. 9 R. 2. c. 3.
2. If the Oath be found false, or the Judgment erroneous, and the Tenant still in Life, he shall be restored to his Possession and Issues, and the Reversioner to the Arrearages: But if he be dead, or be found of Covin with the Demandant, the Reversioner shall have all: Yet the Tenant may traverse the Covin by *Scire facias* out of the Judgment or Writ of Attaint, if he please.
3. Upon every untrue Verdict before Judges of Record, (except where the Thing in Demand extendeth not to the Value of 40 l. or concerneth Life) the Party grieved shall have an Attaint against the Petty Jury, and also against the Party that hath the Judgment thereupon. 23 H. 8. c. 3.
4. The

A Review of all the Statutes,

4. The Process here shall be Summons, Re-summons, and Distress Infinite, as well against the Petty Jury and the Party, as against the Grand Jury, who shall be of the accustomed Number, and have Lands to the Yearly Value of 20 Marks out of ancient Demesne.

5. The Distress shall be awarded fifteen Days before the Return of it, and shall be made upon the Land of every one of the Grand Jury, as is used in other Distresses.

6. Albeit the Defendant or Petty Jury, or some of them appear not, yet the Grand Jury shall proceed.

7. If any of the Petty Jury appear, the Plaintiff shall assign the false Serement, whereunto the Petty Jury shall have no other Answer (if they be the same Persons, and the Writ, Process and Assignment be good) but that they made true Serement, which shall be tried by 24 of the Grand Jury, unless the Plaintiff hath before been nonsuited, or discontinued his Suit, or had Judgment against the Jury for the same Verdict.

8. Howbeit, that the Defendant may plead that they gave a true Verdict, or any other Matter which may bar the Attaint; but notwithstanding such Plea, the Grand Jury shall nevertheless enquire whether the first Jury gave a true Verdict, or no.

9. If the Petty Jury be found to have given an untrue Verdict, they shall each of them forfeit 20 l. to be divided between the King and the Plaintiff, and incur several Fines

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Fines at the Discretion of the Justices, and be ever after disabled to give Testimony in any Court.

10. If the Defendant's Plea in Bar be found against him, the Plaintiff shall have Judgment to be restored to what he lost, with his reasonable Costs and Damages.

11. Outlawry or Excommunication, shall be no Plea against the Plaintiff in Attaint; and in the aforesaid Process, such Day shall be given as in Dower, but no Effoin or Protection allowed.

12. If the Grand Jury appear not, so that the Petty Jury's Verdict remain untried, the Defaulters shall upon the first Distress forfeit 20 s. upon the second 40 s. and upon every Distress after 5 l. The like Penalty is also to be inflicted upon the *Tales*.

13. The Attaint is maintainable as long as any two of the Petty Jury are alive.

14. An Attaint shall also lie for a Personal Thing under the Value of 40 l. in Manner aforesaid, save only in such case the Grand Juror is to have Lands worth five Marks *per Annum* out of ancient Demesne, or to be worth a hundred Marks in Goods; and the Forfeiture of each Juror shall be but 5 l.

15. For Want of sufficient Jurors in one County, a *Tales* shall be awarded into another County at the Discretion of the Justices.

16. An Attaint shall also lie for him in Reversion or Remainder; and also if in Attaint the Plaintiff be nonsuit, or discontinue
I his

A Review of all the Statutes,

his Suit, he shall be fined at the Discretion of the Justices.

17. All Attaints shall hereafter be taken at the *King's-Bench* or *Common-Pleas*, and not elsewhere; and *Nisi-prisus* shall be granted upon the Distress: At the Discretion of the Justices also any of the Petty Jury may appear, and answer by Attorney.

18. As concerning the Forfeitures, the several Moieties shall be recovered by the King, and Parties respectively, by *Ca. sa.* or *Fi fa'*, or *Elegit*, or Action of Debt against each of the Petty Jury; their Executors or Administrators having sufficient Goods of the Testator's not administered.

19. Judgment, and Execution of Restitution to the Plaintiff, and of Discharge of Restitution to the Tenant or Defendant, shall be given and had as in case of a grand Attaint hath been used.

20. The Nonsuit or Release, shall not prejudice his Companions.

21. In every Writ of Attaint, after the *Teste*, these Words shall be inserted, *Per Statutum continuatum usque Annum, 23 H. 8. dei Gratia, &c.*

Attornment.

[See before the late Direction therein (by Act of Parliament 4 & 5 Ann. c. 16.) Tit. Amendment.]

Attor

Attornies.

BY *Merton, cap. 10. 20 H. 3.* Every Free-
man that oweth Suit to the County,
Tything, Hundred or Wapentake, or to a
Court-Baron, may make an Attorney to do
his Suit for him. To do Suit
of Court.

By *Westm. 2. cap. 10. 13 Ed. 1.* Any Per-
son may make a general Attorney to sue in
all Pleas, during the Circuit of Justices in
Eyre: Howbeit that shall not excuse the
Party from being put upon Juries and Affi-
zes before the same Justices. A general
Attorney.

By Statute 7 R. 2. 14. they who shall
depart the Realm with the King's Licence,
may before their Departure have a Patent
from the Chancellor, (with the Advice of
the Justices) enabling them to make gene-
ral Attornies to answer for them in Writs of
Præmunire facias, and all other Writs and
Plaints: In which Patent particular Men-
tion shall be made of Writs and Plaints of
Præmunire facias: And those Attornies may
make Attornies under them. Attornies for
such as depart
the Realm
with Licence.

By Statute 4 H. 4. 18. all Attornies shall
be examined by the Justices, and by their
Discretion put into the Roll. Attornies to
be examined.

Those that are by them approved, shall
swear truly to serve in their Offices, and to
make no Suit in a Foreign County: An in-
sufficient Attorney shall be put out by the
like Discretion of the Justices, and their
Masters or Clients shall have Notice thereof,
lest they be prejudiced thereby. To to be
sworn, &c.

Appointed
by Justices.

As any die or cease, the Justices shall appoint others, being vertuous, learned, and sworn, as aforesaid.

Attorney
degraded.

If an Attorney be found notoriously in Fault, he shall forswear the Court, and be never admitted into any other Court.

The Treasurer, and Barons of the *Exchequer*, shall pursue the like Course there at their Discretion.

Officers not
to be Attor-
nies.

By Statute 4 H. 4. 19. no Officer of a Lord of a Franchise, which hath Return of Writs, shall be an Attorney in the same.

For outlawed
Persons.

By Statute 7 H. 4. 13. Impotent Persons that are outlawed, may make their Attorney: Howbeit in the Writ of *Capias ad satisfaciend'*, the Common Law shall still hold Place.

[See after in the Rules, and see before, p. 13, 14.]

How many
Attornies.

By Statute 33 H. 6. 7. there shall be but six common Attornies in *Norfolk*, six in *Sussex*, and two in *Norwich*, if that shall seem reasonable to the Justices. But it seems the Justices did not think it reasonable, because this Act was never yet put in ure.

Warrants to
be entred.

By Statute 32 H. 8. cap. 30. every Attorney shall enter his Warrant of Attorney in every Suit upon Record in Court, on Pain of 10 l. and further Punishment by Imprisonment at the Discretion of the Court, if he deliver it not in to the Officer, the same Term when the Issue is entred of Record, or before.

By

By Statute 3 *Fac.* 7. an Attorney, Solicitor, or Servant to any, shall not be allowed any Fees laid out for Council, or otherwise, unless he have Tickets thereof signed by the Hand of them that receive such Fees: And he shall also give unto his Client true Bills of all the Charges of Suit under his own Hand, before he can charge his Client with the Payment thereof.

What Fees laid out, he shall be allowed, &c.

If he delay his Client's Suit for Gain, or demand by his Bill more than his due Fees and Disbursements, the Client shall recover against him his Costs, and treble Damages; and he himself shall be for ever after disabled from being an Attorney or Solicitor any more.

If he demand undue Fees.

None shall be admitted Attornies in Courts of Record, but such as have been brought up in the said Courts, or otherwise well practised in Solliciting of Causes, and also skilful, and of honest Disposition; and none but such shall be hereafter suffered to sollicit Causes in any Court.

What Persons to be admitted.

An Attorney shall not suffer any other to follow a Suit in his Name, in Pain that each of them shall forfeit 20 *l.* to be divided betwixt the King and Party grieved.

Not to suffer others to sue in his Name.

[See more of Attornies, *Tit.* Amendment, Appearance, Attaint: And see the 1st Vol. of D'Anvers's Gener. Abridg. fol. 601, &c. *Tit.* Attorney; also *Tit.* Authority, 665.]

A Review of all the Statutes,

And though we have no further Acts of Parliament relating to Attornies, yet there is a late General Rule, or Order, subscribed by all the Judges of the *Queen's-Bench*, *Common-Pleas*, and Court of *Exchequer*, concerning the Admittances and Settling of Attornies and Clerks in some Inns of Court, or *Chancery*, for the Conveniency of Practice: Which General Order, with all the Judges Hands to it, begins (in the Rules of *Queen's-Bench*, pag. 67. and in the *Common-Pleas*, at pag. 122.)

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Note,

Where an
inconsidera-
ble Attorney
suffers a Judg-
ment to pass.

Note further, That if an able and respon-
sible Attorney appear for one without a
Warrant, and the Judgment is against the
Defendant, the Judgment shall stand, and
the Party shall be put to his Action against
the Attorney : But if the Attorney be not
responsible, or in a suspicious Condition,
the Court will set aside the Judgment.

[*Vide Modern Cases lately published*, fol. 16.]

Attachment
for irregular
Practice.

The Court was inclinable to grant an
Attachment against an Attorney, and his
Accomplices, (if they did not attend upon
Order) for procuring one to be turn'd out
of Possession by an ill Practice in Ejectment.

[*Ibid. & vide Savil* 31.]

Marshal.

Also said, That in an Attachment of
Privilege by Marshal, he shall have no
Attorney because present in Court.

Indictment.

And that a Clerk in Court may confess
an Indictment for his Client. *Mod. Cases* 16.

Attorney
neglecting
his Appear-
ance.

An Attorney undertook to appear for
Husband and Wife, but afterwards would
not do it ; the Court set aside the Judgment
for Want of a Plea, and ordered the Attor-
ney to be laid by the Heels : Also said, a
Judge may (upon a Summons) compel him
to appear. *Ibid.* 86.

Husband
must appear
for his Wife.

Also, that if an Husband will order an
Appearance for himself, it will not be
received without an Appearance for the
Wife too, if the Action be against both ;
ibid. and *vide* 2 Lev. 38. that a Wife under
Age shall appear by Guardian.

Note,

Note, It's said, that a Bill filed against an Attorney, must be filed in full Term: And it is not enough to be on any of the Effoin-Days. *Mod. Cases* 106. Bill against an Attorney.

Yet see *Lib. eundem*, fol. 175. where *per Cur'*, one may file a Bill against an Attorney any Day within the Term; and if there be four Days of the Term to come, one may serve Rules upon it that Term: But if the Declaration be in *Easter* Vacation, which is indeed a Declaration of *Easter* Term, the Defendant shall have four Days in *Trinity* Term to plead; and one is not confined to four Days to plead in Abatement, but he has the whole Term of which the Declaration is delivered; but if he has four Days of the Term in which the Declaration is, he shall not plead in Abatement the next Term. When such a Bill may be filed.

An Attorney of the *Common-Pleas* pleaded to the Jurisdiction of the Court: *Per Cur'*, He shall not be sworn to the Plea, nor need the Writ of Privilege be set out at large; and if Matter of Fact be pleaded in Abatement, and found against the Defendant, Judgment final shall be given. *Mod. Cases* 114. Attorney pleads in Privilege.

Idem 187. *Per Holt*, Chief Justice; If an Attorney will take a Man's Money to do Business, and does not do it, we may enter into a summary Examination of it; and if we find him refractory, we may strike him out of the Roll. Struck out of the Roll for Neglect.

There is said to be a Case in the same Book, where the Defendant declared as Clerk of the Court; and Defendant pleaded Declaration as Clerk of the Court. he

he was Attorney of the Court, *absque hoc*, that he is Clerk of the Court. Plaintiff replies, he is a Clerk of the Court, *prout patet per Record inde Residen' in Cur'*, &c. and prays the Record may be inspected: It was said the Plaintiff was regular in his Pleading; and if the Defendant would not join Issue, Plaintiff might sign Judgment, 2.

Avowry, &c.

Avowry and
Conufance,
what.

AN Avowry is when or where one Man takes a Distress for Rent, or other Thing; and the Owner of the Thing distrained sueth a Replevin to have the Distress again, and then he is bound to prosecute his Replevin against the Distrainer; and consequently he which took it, must justify for what Cause he took it: And if he took it in his own Right, he must shew it, and avow the Taking; but if he took it in the Right of another Person, he must then make Conufancee as his Bailiff.

Distress
when.

So then a Distress cometh before a Replevin, and a Replevin before an Avowry; therefore we will take them in order.

Food for Cat-
tel impoun-
ded.

By Statute *de Distractione Scaccarii*, 51 H. 3. the Owner of Impounded Cattel may give them Food without Disturbance.

Debt of the
King.

A Distress taken for the King's Debt, shall not be sold within 15 Days, &c.

What Cattel,
&c. are ex-
empted,

Neither Draught nor Cattel, nor Sheep, shall be distrained (except for *Damage feasant*) so long as other Goods may be found to satisfy the Debt: Distresses shall be reasonable:

sonable: The Sheriff shall answer all Debts received; and where the Sheriff chargeth himself, the Debtor shall be acquitted.

By *Marlb. 1. 52 H. 3.* all Persons (high Justice. and low) shall receive Justice in the King's Court.

None shall take any Distress of his own Authority without Award of our Court, in Pain (upon Conviction thereof) to be punished by Fine, according to the Trespass; and the Party grieved shall be also recompensed his Loss. [See after.]

By *Marlb. 2. 52 H. 3.* none shall distrain any to come to his Court that is not of his Fee, or upon whom he hath no Jurisdiction; neither shall Distresses be taken out of the Fee or Place where he hath no Jurisdiction, in Pain that the Offender shall be punished, as before.

Not to be taken out of the Fee.

By *Marlb. 3. 52 H. 3.* if any will not suffer Distresses to be delivered by the King's Officers, or Summons, Attachments, or Executions of Judgments given in the King's Court to be done, he shall be punished as aforesaid.

Hindring Distresses to be delivered.

If a Lord distrain his Tenant for a Thing, for which he hath Cause to distrain, and yet is afterwards found not to be due; in such Case, if the Lord suffer the Distress to be delivered, he shall not be fined, but only amerced; nevertheless the Tenant shall also recover his Damages against him.

If Lord distrains where nothing is due.

K

By

Not to be driven out of the County.

By *Marlb.* 4. 52 *H.* 3. none shall drive a Distress out of the County wherein it was taken, in Pain to make Fine, as before: And if a Lord presume so to do against his Tenant, he shall be grievously amerced.

No unreasonable Distress.

None shall take an unreasonable Distress, in Pain to be grievously amerced.

King's Prerogative.

By *Marlb.* 15. 52 *H.* 3. it shall be lawful to none (except the King and his Officers, having special Authority) to take Distresses out of his Fee, or in the King's Highway, or in the common Street.

Punishment for wrongful Distress, &c.

By *Westm.* 1. 16. 3 *E.* 1. none shall drive a Distress out of the County, or distrain wrongfully, or out of his Fee, in Pain to be punished, as by the Statute of *Marlb.* is provided, or more grievously, if the Trespass so require.

If impounded in a Castle or Fortrefs.

By *Westm.* 17. 3 *E.* 1. if Beasts be impounded in a Castle or Fortrefs, and (after convenient Notice to the Impounder, &c.) not suffered to be replevied by the Sheriff, or some other of the King's Bailiffs, the King will command that Castle or Fortrefs to be demolished; and (after the first Demand of the Sheriff or Bailiff) the Plaintiff shall recover double Damages against the Lord, or Impounder; or if the Impounder be not able, then against the Lord only.

Sheriff may enter Franchises.

In this Case, if the Bailiff of the Franchise refuse to do it, then shall the Sheriff do it himself upon the aforesaid Pains.

Deliverance to be made.

Also Deliverance shall be made by Attachment of the Plaintiff made without Writ, and upon the same Pain.

By

By *Westm. 2. 36. 13 E. 1.* none shall procure any to distrain another to make him appear at the County-Court, or any other inferiour Court, on purpose to vex him, and put him to Charge and Trouble, in Pain to make Fine to the King, and to pay to the Party grieved treble Damages.

Not for Appearance in Inferiour Courts.

By *Westm. 2. 37. 13 E. 1.* no Distress shall be taken but by Bailiffs known and sworn, in Pain to restore Damages to the Party grieved, and to be grievously punished by the King.

Known Bailiffs.

By *Artic. Cleri 9. 9 E. 2.* Distresses shall not be taken in the Highway, nor in the ancient Sees of the Church.

Not in Highways.

By Statute 1 & 2 P. & M. 12. no Distress of Cattell shall be driven out of the Hundred where it is taken, except to a Pound-overt within the same Shire, nor above three Miles distant from the Place where it was so taken: Neither shall a Distress be impounded in several Places, whereby the Owner may be constrained to sue several Replevins for the Delivery thereof, in Pain to forfeit to the Party grieved for every Offence committed against this Act, 5 l. and treble Damages.

Not to be driven out of the Hundred.

None shall take above 4 d. for the Poundage of one Distress, (and where less is usually taken, to take less) in Pain to forfeit to the Party grieved 5 l. besides what is taken above.

Fees of Poundage.

The Sheriff shall at his first County-day, or within two Months after he receives his Patent, depute, and proclaim in the Shire-Town four Deputies to make Replevins,

Sheriffs Deputies to make Replevins.

A Review of all the Statutes,

not dwelling above 12 Miles distant one from another, in Pain to forfeit for every Month he wants such Deputy or Deputies, 5 *l.* to be divided betwixt the King and Prosecutor.

Executors and Administrators of Tenants of Rent-Services, may distrain for Arrearages.

Note, By Statute 32 *H.* 8. 37. the Executors or Administrators of Tenants in Fee-simple, in Fee-tail, or for Term of Life; of Rent-services, Rent-charges, Rent-secks, and Fee-farms, unto whom any such Rent or Fee-farm was due and unpaid at the Time of his Death, shall have an Action of Debt for all the Arrearages thereof against the Tenant or Tenants that ought to have paid them to their Testator, or against the Executors or Administrators of such Tenant or Tenants; and shall also distrain for the said Arrearages upon the Lands chargeable therewith, so long as they continue in the Seisin or Possession of such Tenant in Demesne, or of any other Person claiming by or from him, in like manner as their Testator might have done: And the said Executors or Administrators shall likewise for the same Distress lawfully make Avowry upon the Matter aforesaid.

But not to extend.

This Act shall not extend to any Manor, Lordship, or Dominion in *Wales*, or the Marches thereof, where the Inhabitants have used Time out of Mind to pay to every Lord, or Owner of such Manors, &c. at their first Entry into the same, any Sum or Sums of Money, for the Discharge of all Duties, Forfeitures and Penalties wherewith the Inhabitants were chargeable to any of their

their said Lords, Ancestors or Predecessors, before such their Entry.

If any Person hath in Right of his Wife any Estate in Fee-simple, Fee-tail, or for Term of Life, in any such Rents or Fee-farms, and the same happen to be due and unpaid in his Wife's Life; such Husband, after the Death of his Wife, his Executors and Administrators, shall have an Action of Debt for the said Arrearages, against the Tenant of the Demesne, that ought to have paid the same, his Executors or Administrators; and shall likewise distrain for the same, and make Avowry, as he might have done if his Wife were living: The like Power hath Tenant *per auter Vie*, for Arrearages due and unpaid in the Life-time of *Cestuy que Vie*.

The Husband and his Executors may distrain for Arrearages of Rents of Fee-farms, &c. due in his Wife's Life-time.

By *Marlb. 21. 52 H. 3.* if Beasts be taken, and wrongfully withholden, the Sheriff, (upon Complaint thereof) may deliver them without Lett or Gainsaying of him that took them, if they were taken out of Liberties; but if within any Liberties, and the Bailiffs thereof will not deliver them, the Sheriff upon such Bailiff's Default shall cause them to be delivered.

Replevin by Bailiff of the Liberty, or the Sheriff.

By *Westm. 2. 2. 13 E. 1.* where, upon Replevins, Lords cannot obtain Justice in Counties, and other inferiour Courts against their Tenants, when such Lords are attached at their Tenant's Suit, a Writ shall be granted them (*viz. a Recordare*) to remove the Plea before the Justices, where Justice shall be done them: And the Cause shall

A *Recordare* to remove Pleas before the Justices.

A Review of all the Statutes,

be inserted in the Writ, *viz.* because such a Man distrained in his Fee for Services and Customs to him due.

How the
Avowry shall
be.

Here, the Avowry shall be upon the Seisin of any Ancestor, or Predecessor, since the Time that a Writ of *Novel Disseisin* hath run.

Pledges *ad*
return *Hq-*
bend.

The Sheriff, or Bailiffs, shall not only take Pledges of the Plaintiff to prosecute his Suit, but also return the Cattel, in case Return be awarded: And if Pledges be otherwise taken, he shall answer the Lord for the Price of the Beasts, to be recovered by Writ; and if the Bailiff be not able to restore them, his Superior shall do it.

A Writ of 2d
Deliverance.

If after Return once awarded, the Beasts are again replevied, or, as soon as the Return of the Beasts is the second Time awarded, the Sheriff shall be commanded by a judicial Writ, to make Return thereof to the Distrainer; in which Writ it shall be expressed, that the Sheriff shall not deliver them without a Writ making mention of the Judgment given by the Justices, and such Writ is to issue out of the Rolls of the said Justices: After which, if the Plaintiff desire to replevy his Beasts, he shall have a judicial Writ, (*viz.* a Writ of second Deliverance) that the Sheriff taking Surety for the Suit, and also of the Beasts to be returned, or their Price, (if Return be awarded) shall deliver the Beasts before returned; and the Distrainer shall be attached to come before the Justices at a certain Day; and if he that replevied make Default, or for some other Cause,

Cause, Return of the Distress is awarded, (being now twice replevied) the Distress shall afterwards remain unreplevied.

By Statute 17 Car. 2. cap. 7. *apud Oxon.* for more speedy and effectual Proceeding upon Distresses and Avowries for Rents, enacted, That when any Plaintiff in Replevin by Plaint or Writ returned, removed or depending in any of the King's Courts at *Westminster*, the Defendant making a Suggestion in Nature of an Avowry or Conuſance for ſuch Rent, to aſcertain the Court of the Cauſe of the Diſtreſs, the Court upon his Prayer ſhall award a Writ to the Sheriff of the County where the Diſtreſs was taken, to enquire by the Oaths of Twelve good and lawful Men of his Bailiwick, touching the Sum in Arrear at the Time of ſuch Diſtreſs taken, and the Value of the Goods or Cat- tel diſtrained; and thereupon fifteen Days ſhall be given to the Plaintiff, or his Attorney in Court, of the Sitting in ſuch En- quiry; and thereupon the Sheriffs ſhall enquire of the Truth of the Matter con- tained in ſuch Writ, by the Oaths of Twelve good and lawful Men of his County: And upon the Return of ſuch Inquiſition, the Defendant ſhall have Judgment to recover againſt the Plaintiff the Arrearages of ſuch Rent, in caſe the Goods or Cat- tel diſtrained ſhall amount unto that Value: And if they amount not to that Value, then ſo much as the Value as the ſaid Goods and Cat- tel ſo diſtrained ſhall amount unto, together with

Upon Sug-
geſtion in na-
ture of an
Avowry, a
Writ of En-
quiry of Ar-
rears to be
awarded.

full Costs of Suit ; and shall have Execution thereupon by *Fieri facias* or *Elegit*, or otherwise, as the Law shall require. And in case such Plaintiff shall be nonsuit after Conusance or Avowry made, and Issue joined, or if the Verdict shall be given against such Plaintiff, then the Jurors that are impanelled or returned to enquire of such Issue, shall at the Prayer of the Defendant enquire concerning the Sum of such Arrears, and the Value of the Goods or Cattel distrained : And thereupon the Avowant, or he that make Conusance, shall have Judgment for such Arrearages, or so much thereof as the Goods or Cattel distrained amounts unto, together with his full Costs, and shall have Execution for the same by *Fieri facias*, or *Elegit*, or otherwise, as the Law shall require.

And if any Judgment in any of the Courts aforesaid be given upon Demurrer for the Avowant, or him that maketh Conusance for any Rent, the Court shall, at the Prayer of the Defendant, award a Writ to enquire of the Value of such Distress : And upon Return thereof, Judgment shall be given for the Avowant, or him, &c. for the Arrears alledged to be behind in such Avowry or Conusance, if the Goods or Cattel so distrained amount to that Value : And if they shall not amount to that Value, then for so much as the said Goods or Cattel so distrained amount unto, together with his full Costs of Suit : And shall have like Execution as aforesaid.

Provided,

Provided, That in all Cases aforesaid, when the Value of the Cattel distrained, as aforesaid, shall not be found to be to the full Value of the Arrears distrained for, that the Party to whom such Arrears were due, his Executors or Administrators, may from Time to Time distrain again for the Residue of the said Arrears.

Concerning Distresses, &c. for Rent, by later Acts of Parliament.

BY the Act Anno 2^o Will^m & Mariæ, for distraining for Rent, and enabling the Sale of Goods distrained for Rent, it is enacted, *viz.*

That where any Goods or Chattels shall be distrained [by any Landlord, which may be done without a Constable] for any Rent reserved, and due upon any Demise, Lease or Contract whatsoever :

If the Tenant does not replevy them within five Days after Notice, they may be appraised in Presence of the Sheriff, Under-Sheriff, or a Constable of the Hundred, Parish or Place where such Distress shall be taken, by two Appraisers, to be sworn by such Sheriff or Constable, and afterwards sold for the best Price that can be gotten for the same : And that after Deduction of the Rent, Charges of Distress, Appraisement and Sale, the Overplus may be left with the said Sheriff or Constable for the Owner's Use.

Goods distrained for Rent.

If not replevied within five Days,

May be appraised and sold.

Also

Sheaves or
Cocks of
Corn, &c.
how to be di-
strained.

Also by this Act, Liberty is given to distrain, seize and secure any Sheaves or Cocks of Corn, or Corn loose or in the Straw, or Hay lying and being in any Barn or Granary, or upon any Hovel, Stack or Rick, or otherwise, upon any Part of the Land or Ground charged with such Rent; and to lock up or detain the same in the Place where the same shall be found, for and as a Distress, till the same shall be replevied upon Security.

To be sold,
&c. if not re-
plevied.

And if not replevied within five Days, to be appraised and sold; but such Corn, &c. must not be removed until the same shall be replevied, or sold in Default of replevying the same within the Time aforesaid.

Damages for
Pound-
Breach.

Also in case of a Pound-Breach or Rescue of the Goods distrained, the Party shall recover treble Damages and Costs against the Offender or Owner, if they come to his Use thereby.

Costs to the
Owner,
where.

That if any Goods be distrained and sold on Pretence of Rent, where no Rent is due; the Owner shall recover double Value, and full Costs.

Caution to
the Tenant.

It seems by the last Clause of this Act, that if Goods be distrained upon a Pretence for Rent, where none is due; yet no Action lies by this Act, unless they were also sold as well as distrain'd: So that if the Party intend to take the Benefit of this Act, (for double Value, and full Costs) 'tis not advisable for him in such Case to replevy his Goods: But yet he may replevy them, or let them lie, and have the Benefit of the former Law.

The

The Form of the Oath (or Charge) to be administred to the Appraisers, may be after this Manner :

YOU shall well and truly, according to the best of your Understanding, appraise the Goods and Chattels of C. D. distrained on for Rent by A. B. Of which Goods and Chattels, you shall have good Sight and Consideration.

The Charge to the Appraisers.

So help you God.

Note, That about *Hill. 3 Ann', inter Dodd and Monger*, it was said by the Chief Justice, That if a Landlord comes into a House, and seizes upon some Goods as a Distress in the Name of all the Goods in the House, that will be a good Seizure of all ; but he must remove them in convenient Time at Common Law.

Seizure of some Goods in name of all, is good.

And that now, since the late Statute of *W. & M.* he must remove them immediately, except it be Hay or Corn ; and in the principal Case there, which was for rescuing Goods distrain'd for Rent, and Defendant justifies by Replevin ; for that the Seizure was on *Monday*, though of Barrels of Beer not easily removeable (if at all) without Damage, and no Removal till *Wednesday*, when the Defendant took them by Vertue of a Replevin, wherein the Lessee, not the Distrainant, was made Defendant : And besides,

And to be removed immediately, except Hay or Corn.

besides, the Plaintiff quitted Possession of them the two intervening Nights, and had not the Possession at the Time of the Taking by Vertue of the Replevin, without which there could be no *Rescous*, the Plaintiff was nonsuited: And in this Case it appeared the Distrainant drew Beer out of one of the Barrells; which *per* Chief Justice, made him a Trespasser *ab initio*, as to that Barrell only.

Stat. 8 Q. Ann.
for saving the
Landlord's
Rent, before
Goods be re-
moved by
Vertue of an
Execution.

By an Act made *Anno 8 Annæ Reginae*, it is enacted, That no Goods or Chattels, being on any Messuage, Lands, &c. leased for Life or Lives, Term of Years, at Will or otherwise, shall be taken by Vertue of an Execution, &c. unless the Party at whose Suit the said Execution is sued out, shall before the Removal of such Goods, pay to the Landlord of the said Premisses, or his Bailiff, all such Sum or Sums of Money as shall be due for Rent at the Time of taking such Goods, &c. by Vertue of such Execution.

Not to exceed
one Year's
Rent.

Provided the Arrears of Rent do not amount to more than one Year's Rent; and in case the Arrears exceed one Year's Rent, the Party at whose Suit such Execution was sued out, paying the Landlord one Year's Rent, may proceed to execute his Judgment, as he might have done before the making of this Act: And the Sheriff or Officer is to levy and pay the Plaintiff as well the Money so paid for Rent, as the Execution-Money.

Any

Any Lease for Life, Term of Years, at Will or otherwise, of any Messuages, &c. upon the Demise, whereof any Rents shall be reserved, fraudulently carrying off from such demised Premises his Goods or Chattels, with Intent to prevent the Landlord from distraining, the Landlord may within five Days take and seize such Goods wherever they shall be found, as a Distress for the Arrears of such Rent; and may dispose and sell the same, as if such Goods had been distrained upon the demised Premises.

Where Landlord may follow and distress Goods fraudulently carried off the Premises.

But nothing in this Act shall extend to empower the Landlord to seize any Goods which shall, *bonâ fide*, be sold for a valuable Consideration before Seizure.

Exception of Goods sold *bonâ fide*.

That any Person having Rent in Arrear, or due upon any Lease for Life, may bring an Action of Debt for such Arrears of Rent, in the same manner as he might in case such Rent were due, and reserved upon a Lease for Years.

Debt for Rent upon a Lease for Life.

All Distresses hereby made, shall be liable to such Sales, &c. and the Monies arising by such Sales, shall be distributed as by the Landlords Act of 2 W. & M.

These Distresses liable as by the former Act.

That any Person having Rent in Arrears due upon any Lease determined, may distress for such Arrears, in the same Manner as he might have done if such Lease had not been determined; so as the Distress be made within six Kalender Months after the Determination of such Lease: And during such Landlord's Title, and during the Possession of the Tenant from whom such Arrears become due.

How a Landlord may distress for Rent-arrear upon a Lease determined.

That

Any

Privilege to
Her Majesty.

That nothing in this Act shall extend to prejudice Her Majesty in levying any Debts, Fines, &c. due to Her Majesty.

[See this Head of Avowry and Distress, and the several Cases and Pleadings therein adjudged, in the first Volume of D'Anvers's Gen. Abridg. fol. 644. b. 645, &c.]

Audita Querela.

Audita Querela, what.

AN *Audita Querela*, is said to be only an Equitable Action, and may be brought by a Reversioner, or him that hath but *Interesse Termini*. Marsh. Rep. 71.

Also it lies where a Man hath a Release, but hath no Day in Court to plead it.

Remedy by
Audita Querela.

By 23 H. 8. 6. enabling the Justices of either Bench to take Recognizances for the Payment of Debt, it is provided, That the Recognizor so bounden, or otherwise grieved by such an Obligation, shall have like Remedy by *Audita Querela*, and all other Remedies in the Law, as upon Obligations of the Statute of the Staple.

Contribution
allowed.

But by 16 & 17 Car. 2. cap. 5. no Extent upon any Statute, Judgment or Recognizance, shall be avoided or delayed, because Part of the Lands extendible are omitted, saving to the Party whose Lands are extended, his Remedy for Contribution.

What Statutes and
Extents are
excepted.

Also no Statutes, unless defeazanced for Payment of Money only, nor Extents unless within twenty Years after Judgment had, are within this Act of 16 & 17 Car. 2.

cap.

cap. 5. which by 22 & 23 Car. 2. cap. 2. is made perpetual.

Tenants in Common, it's said, must join By Tenants in an *Audita Querela*, Mo. 664. but a Tenant in Common may have it without his Companion. *Marsh. Rep.* 71.

Also, if a Man be nonsuited in an *Audita Querela*, he may bring a new Writ, as by 22 Ed. 3. 4. b. but he shall not have a *Superseas*. F. N. B. 104.

[See this Head at large in the first Volume of D'Anvers's General Abridgment, 628, 629, &c.]

Award. Vid. ante Arbitration.

[Also see some late Judgments, &c. on this Head, in the Table, &c. to Modern Cases, Tit. Award.]

B.

Of Bail and Mainprize.

Bail defined.

BAIL (in Latin *Ballium*, *Plevina*, *Manu-captio*) is used in our Common Law properly for the Freeing or Setting at Liberty of one arrested or imprisoned upon an Action, either Civil or Criminal, under Surety taken for his Appearance at a Day and Place certainly assigned. *Bract. Lib. 3. Tract. 2. cap. 8. numb. 8 & 9.*

The Reason why so call'd.

The Reason why it is called *Bail*, is, because by this Means the Party restrained is delivered into the Hands of those that bind themselves for his forth coming; and who are to answer the Party, if they do not produce the Principal to do it. *Pract. Reg. 113. last Pub.*

Of two Sorts.

Also, there is both Common and Special Bail.

Common Bail.

Common Bail is in Actions of small Prejudice, or slight Proof; being called *Common*, because any, yea fictitious Sureties in that Case are taken upon Process out of the Superiour Courts, as *John Doe* and *Richard Roe*, *John Denn* and *Richard Fenn*.

Special Bail.

Whereas in Causes of greater Weight, or apparent Specialty, Special Bail or Surety must be taken.

[See Cowell's Interp. Tit. Bail.]

Main-

Mainprize is also called *Manu captio*, and signifieth in our Common Law, the Taking or Receiving a Man into friendly Custody, (that otherwise is or may be committed to the Mercy of the Prison) upon Security given for his forth coming at the Day assigned: As to let one to Mainprize, *Old Nat. Brev. fol. 42.* is to commit him to them who undertake for his Appearance at the Time appointed; and they that do thus undertake for any, are called *Mainpernors*, because they receive him into their Hands. *Plow. Com. fol. 178.*

Mainprize defined.

Of this Sort, is the Word *mainpernable*, which signifieth him that hath committed such an Offence as by Law he may be thus bailed; for in many Cases a Man is not mainpernable.

Mainpernable.

[Whereof see Brook. Tit. Mainprize per totum, and Fitz. Nat. Brev. 249, &c.]

Yet Mr. *Manwood*, in the first Part of his *Forest Laws*, pag. 167. makes a great deal of Difference between Bail and Mainprize; for he saith, that he that is mainprized is always said to be at large, and to go at his own Liberty out of Ward, after the Day is set to Mainprize, until the Day of his Appearance, by reason of the common Summons, or otherwise; but otherwise it is where a Man is let to Bail by two or four Men, by the Lord Justice in Eyre of the Forest, until a certain Day; for there he is always accounted by the Law to be in their Ward and Custody for the Time, and they may if they will keep him in Ward or in

Difference between Bail and Mainprize.

L

Prison

Prison all that Time, or otherwise, at their Will : So that he that is so bailed, shall not be said by Law to be at large, or at his own Liberty.

Difference
between Pled-
ges and Main-
pernors.

Also the *Mirror of Justices* maketh a Difference between Pledges and Mainpernors, saying, That Pledges are more general, and that Mainpernors are Body for Body. *Lib. 2. cap. de Tres. Venial.* and *Lib. 3. cap. des Pledges & Mainpernors.*

Pledges.

He saith, Pledges be those that bail or redeem any Thing but the Body of a Man ; and that Mainpernors be those that free the Body of a Man ; and that Pledges therefore belong properly to real and mix'd Actions, and Mainpernors to personal.

Mainpernors.

[See Cowell's Interp. Tit. Mainprize.]

When Main-
prizes may be
granted.

[*And when Mainprizes may be granted, and when not, vide Cromp. Inst. Pac. fol. 136. and Lamb. Eirenarsh. lib. 3. c. 2. p. 336, 337, &c. and Britton, fol. 73. a. Cap. des Pledges & Mainpernors.*]

[*Vide Mainprize, 2 Roll. Abridg. 112. and for the Diversity between Bail and Mainprize, vide 4 Inst. 179. Godb. 339.*]

Where a Bill
cannot be
filed.

And 'tis to be observed, That against him that is mainprized *de Die in Diem*, no Bill can be filed, otherwise against him that is bailed. *4 Inst. 180.*

Misdemean-
ors in taking
Bail, 21 Jac.
c. 26.

[*For Misdemeanors in taking Bail, vide Cro. Eliz. 714. Cro. Jac. 256. Cro. Car. 146. 2 Sid. 90, 91. 21 Jac. cap. 26.*]

By

By the Statute of *Westm. 1. cap. 15.* it is enacted, That forasmuch as Sheriffs, and others, had taken and let out some which were not replevisable, and kept in Prison others that were replevisable; and that it had not been determined what Persons were replevisable or not, but only such as be taken for the Death of a Man, or by Command of the King or his Justices, or for the Forest; it is provided, That Persons outlawed, abjured the Realm, Provers, and such as be taken with the Manner, Breakers of Prison, Thieves openly defamed, and known Appellees by Provers, so long as the Provers live, House-burners, those taken for false Money, or counterfeiting the King's Seal; Persons excommunicate, and taken at the Prayer of the Bishop, or for manifest Offences and Treason against the King himself, are not replevisable by the Common Writ, or without: But such as are indicted of Larceny by Inquest, before the Sheriff or Bailiffs by their Office, or of light Suspicion, or Petty Larceny not above the Value of 12 *d.* if not guilty of other Larceny before, or those guilty of Receipt of Felons, or of Commandment, Force or Aid in Felony done, or other Trespas, for which one ought to lose Life or Member; the Appellees by Provers, after the Death of the Provers, (if no common Thief, nor defamed) shall be let out upon sufficient Sureties, (for which the Sheriff will answer) without giving ought of their Goods, &c.

Who are, or are not bailable by Stat. *West. 1. c. 15. (3 Ed. 1.)*

Who not.

Who are.

What Larceny bailable.

So that it appears, Persons guilty of Larceny taken before Sheriffs or Bailiffs, or of Petty Larceny not before detected, or Accessary unto any Felony, or only guilty of some Trespass, for which he ought not to lose Life or Member, are bailable by good Sureties. *Stat. ubi supra.*

Also to bail those who are not bailable, and to refuse to bail those who are, is punishable by Fine and Imprisonment. *Hale's Pl. Cor. 97.*

Exposition of this Statute.

It is observed, that this Statute beginning with Inferiour Officers, extends not to Judges of Superiour Courts; and they do not take or keep any, &c. *2 Inst. 185, 186.*

To replevy to Bail.

That to replevy or plevy, is properly applied to the Sheriff's taking Pledges, and Bail, to the highest Courts of Record. *2 Inst. 186.*

Not by the Sheriff.

It is also intended, that such as be taken for the Death of a Man, or by Command of the King, or his Justices, or the Forest, were not bailable by the Sheriff. *2 Inst. 186.*

Manlaughter.

And that yet by *2 & 3 P. & M. cap. 13.* it appears, that in case of Manlaughter, Bail may be taken in some Cases; and that therefore this Clause must be intended of ordinary Bail. *Poyne's Case, 1 Roll. Rep. 268. 3 Balst. 113.*

Imprisoned by Command of the King.

By lawful Process in a legal Course, &c. *2 Inst. 186, 187.* but yet if he is imprisoned upon the personal Command of the King only, though it is illegal, yet he cannot be bailed by the Sheriff, but by the Courts at *Westminster* by an *Habeas Corpus*. *2 Inst. 187.*

Where it is said, Or by Command of the King, or his Justices, or for the Forest; *per Stamf. 72.* This is intended of his personal Command, by his own Mouth, or of his Council, which is incorporated into him: *Vide 1 Roll. Rep. 134. vide postea.*

Or his Justices, &c.

King's Council.

But how such as are taken for *Vert* or *Venison*, shall be mainprized, and by whom, *vide 1 Ed. 3. cap. 8.*

Taken for Vert, &c.

As to the Outlawed, &c. if upon a *Capias Uilagatum*, he pleads Misnomer, or alledge Error, he may be bailed, *2 Inst. 188. Stamf. 74.* But yet *vide Stiles's Rep. 410.* where one outlawed for a Robbery, &c. brought Error, and was denied Bail in *B. R.*

Persons outlaw'd.

[But see before pag. 12. concerning Bailing outlawed Persons.]

As to the Life of Provers (which so long serves in nature of an Indictment), if the Prover waives his Appeal, the Appellee shall be bailed, if there be no other Appeal against him; *2 Inst. 188. Stamf. 74.*

Life of the Provers.

But though he vanquish the Approver, yet if he be appealed by another Approver, he shall not be bailed. *Stamf. 74.*

Second Appeal.

And as to that Clause which relates to Excommunication, if the Party offers sufficient Caution, *de parendo Mandatis Ecclesie in forma Furis*, the Party shall have a Writ to the Bishop to accept his Caution, and to cause him to be delivered: And if the Bishop will not send to the Sheriff for his Delivery, he shall for that Purpose have a Writ to the Sheriff. *2 Inst. 189.*

Excommunication.

When taken
upon *Cap'*
Excom'.

But he that is taken upon a *Capias Excom-municatum* upon 5 *Eliz.* tho' he is notailable by the Sheriff, &c. yet he may be bailed in *B. R.* 1 *Bulst.* 122.

Notailable
for great Of-
fences.

And it is observ'd, that for manifest and open Offences, and Treasons, &c. Bail is not taken, but only where the Matter *Stat indifferenter*, 2 *Inst.* 189. and that any of these Offences areailable in the *King's-Bench*, &c. 2 *Inst.* 189. for the *King's-Bench* hath a higher Power than any other, and can bail where another Court cannot.

[*Vide Hale's Pl. Coron.* 104. *See after.*]

Breve de Ma-nucaptione.

And that upon this Statute, the Writ de *Manucaptione* is founded, which mentions the Particulars therein after mentioned. 2 *Inst.* 190.

Persons in-
dicted before
the Sheriff or
Bailiffs.

As to such as are indicted before the Sheriff or Bailiffs, it is observ'd, That by 1 *E. 4. cap. 2.* upon Indictments or Presentments taken before Sheriffs or Bailiffs, or their Ministers, at their Turn or Law-Days, they shall not arrest, attach, or put in Prison any Person therein, but deliver all such Presentments and Indictments to the next Justices of the Peace, at their Sessions, &c.

When bailed
for Felony.

That a Man arrested and imprisoned (andailable) for Felony, shall be bailed before it appears whether he is guilty or not; but if convicted by Verdict, or Confession, &c. he is notailable. 4 *Inst.* 178.

When not,

So if upon Examination a Man confesses the Felony, and the *Mittimus* be for Felony confess'd he cannot be bailed. *Ibid.* & 3 *Bulst.* 114. 1 *Roll. Rep.* 268.

That

That if one be committed by the Personal Command of the King, or by Order from the Council-Board; or if any one, or two of his Council, commit one for High-Treason; such Persons may not be delivered by any Court without due Trial, and Judgment of Acquittal had. 1 And. 298. 1 Roll. Rep. 134. Vid. Moor 839. Pl. 1132. & 1 Mod. 145.

Commitment by the King, or Council-Board, &c.

[Vide postea.]

But in such Case, upon the Return of an Habeas Corpus, the Cause of his Commitment must be certified to the Judges, which cannot conveniently be done, unless Notice thereof be given, generally or specially, to the Gaoler in whose Custody he is, &c. Yet Vide 1 Roll. Rep. 134. where it was said by the Chief Justice, That if the King's Bench, or if himself committed one, tho' no Cause was declared, he is not bailable by any; for perhaps it is a Cause touching the State, which is not convenient to be known.

Cause certified in a Habeas Corpus.

A. being indicted for Murder, and ready to be tried, the Proceedings upon the Indictment were left off for a Time, upon Suspicion of a partial Jury, and an Appeal brought; and though by the Appeal the Indictment was gone, yet because the Delay was on the Part of the Prosecutor, and not of the Prisoner, he was bailed. 1 Bulst. 85. Morgan's Case.

After an Indictment for Murder, Appeal brought.

Prisoner bailed.

If upon an Indictment of Murder, the Jury find a Special Verdict, and thereupon there is a Curia advisare vult, the Prisoner (it's said) is not bailable. Ibid. 87, 88.

Special Verdict.

Clergy.

So where the Prisoner is found guilty, and *Curia advisare vult*, whether Clergy is allowable or not, *vide Dyer* 179. Pl. 42.

Where not
bailable by
Sheriff.

By the 4th of *Ed. 3. cap. 2.* such as are indicted, or taken by the Keepers of the Peace, and are not bailable by Law, shall not be let to Mainprize by the Sheriff, or other Minister, nor delivered but at Common Law.

Aliter in B. R.

Yet the *King's Bench*, if they please, may bail in all Cases; but if the Cause of Commitment return'd upon an *Habeas Corpus* be just, the *Common-Pleas* must remand. *Vaugh.* 157.

Upon a Writ of *Odio & Atia*, *vide 2 Inst.* 42, 43.

Not by Mar-
shal of B. R.

By the 5th of *Ed. 3. cap. 8.* the Marshal of the *Kings-Bench* shall not let to Bail his Prisoners indicted or appealed of Felonies, &c.

Certifying
Recognizances,
&c.

Recognizances and Bail taken by Justices of the Peace, are to be certified into the Court the first Day of every Sessions before Noon, for the Reasons there mentioned. *Kelyng's Rep. fol. 1.*

Just. of Peace
fined for De-
fault.

And that the Justices of Peace who are faulty herein, be fined by the Justices of Gaol-delivery, according to the Statute of 1 & 2 P. & M. c. 13. and 2 & 3 P. & M. c. 10. *Kelyng's Rep. 2.*

Felon bailed.

That no Prisoner for Felony be discharged during the Interval of Sessions, unless it be upon good Bail taken, &c. *Ibid. 3.*

The

The Difference between Bail and Main-prize is, That Mainpernors are only Sureties, but Bail is a Custody; and therefore the Bail may reseize the Prisoner if they doubt he will fly, and detain him, and bring him before a Justice; and the Justice ought to commit the Prisoner in discharge of the Bail, or put him to find new Sureties: And the like may be done by the Justices in case of insufficient Bail. *Hale's Pl. Cor.* 96.

Difference between Bail and Main-prize.

It is to be observ'd, that before the Statute of 1 R. 3. cap. 3. which is repealed by 3 H. 7. cap. 3. no Justice of the Peace could have bailed any one for Felony; for before this, he ought to have been bailed by the Sheriff, or other Keeper of the Prison where he was in Ward, or by the Constable, and by no other Officer, unless Justices of the King's-Bench, Justices in Eyre, or Justices of Gaol-delivery; and this Observation was made, *Trin. 37 Eliz.* by the Judges at an Assembly at *Serjeants-Inn*; *Vide Poph.* 96.

Concerning the Power of Justices of Peace to take Bail.

It is further observ'd, that before Statute of *Rich. 3.* the Justices of Peace might bail such as were indicted before them; but that Statute gave them Power to bail before Indictment, *Stamf.* 75. or else appealed before them; because before Indictment or Appeal they were no Judges of the Person, or Cause of Imprisonment; for being of Record, they ought to proceed upon what is judicially before them upon Record; and 'tis thought, it would have been absurd that they should deliver one to Bail, when they were no Judges

Judges of him, or the Cause of his Imprisonment : *Coke's Treatise of Bail, cap. 6.*

**Lord Coke's
Treatise of
Bail.**

But where Justices of Peace may now bail, see that Treatise, because it seems to be designed particularly for their Use.

**1 & 2 P. & M.
Manslaugh-
ter.**

[See also the Statute 1 & 2 P. & M. cap. 13. how such as are arrested for Manslaughter, may be bailed by the Justices of Peace ; and vide 4 Inst. 278.]

**Just. of Peace
binding to
Good Beha-
viour, &c.**

[See Pulton de Pac. Reg. fol. 18, &c. concerning Justices of Peace binding Persons to their Good Behaviour, and taking Sureties of the Peace: See also Dalton's Justice, &c.]

**Bailing for
Felony by
Just. of Peace.**

That the Statutes that give Power to Justices of the Peace to bail in case of Felony, are 3 H. 7. c. 3. 1 & 2 P. & M. c. 13. upon which there are two Kinds of Bailments ; for which vide Hale's Pl. Coron. 105. but see after the Habeas Corpus Act.

**Concerning
Just. Peace's
Bailing, &c.**

If any Justice of the Peace shall take Bail where he ought not, or wittingly or willingly take insufficient Bail, and the Party appear not ; the said Justice not only to be proceeded against according to Law, but likewise to be complained of to the Lord Chancellor, that he may be turn'd out of his Commission. *Kel. Rep. 3.*

**Where bailed
before Clergy.**

Idem, Rep. pag. 90. Lisle's Case in B. R. the Question was, Whether one convicted of Manslaughter might be bailed before he had his Clergy ? And adjudged he might, notwithstanding the Case of *Dyer 297, &c. 42.*

For

For though Justices of Oyer and Terminer, and Gaol-delivery, might not bail in such a Case, yet the *King's-Bench* is not restrained from bailing by the Statute of 1 *W. cap. 15. 2 Inst. 185.* but hath a Liberty of bailing by the Common Law if the Person be not attainted. *Vid. Co. Entr. 355.*

And note, That in *Hal. Pl. Coron.* there is much said concerning Bail, as what it is, the Difference betwixt Bail and Mainprize, as before observ'd, and in what Cases, and by whom to be taken. *Idem 96.*

Concerning the Fine and Punishment of such Officers as refuse Bail, where the Party ought to be bailed, and admitting Bail when it ought not. *Idem 97.*

That at Common Law, Bail was in all Cases, but *Homicide*: But that now the Statute of *Westm. 1. cap. 15.* directs in what Cases bailable, and what not. *Ibid.*

That in all Offences below Felony, the Party accused is bailable, unless ousted by that Statute, or some other Statute, or unless Judgment be given. *Idem 98.*

That the Cases of Felony wherein the Parties are not bailable, are either in respect of the Heinousness of the Offence,

Refusing Bail.

Stat. *West. 1. cap. 15.*

Offences below Felony.

Felony not bailable.

1. As in Charge of Treason against the Great Offender King's Person: Counterfeiting the Seal: Falsifying Money.

2. Arson, or burning Houses: Or,

3. In

Power of
B. R.

3. In a Charge of *Homicide*. *Vide Dalton's Just. cap. 14.* where it appears the *King's Bench* may bail in Murder, (but in Discretion do not;) for the Statute of *Westm. 1.* extends not to that Court. *Hal. Pl. Cor. 99.*

Upon a *Non
liquet*, &c.

If it be a *Non liquet*, that he is the Person, and the Charge but Manslaughter, it seems the Justices of Peace may bail. *Ibid.*

Accessaries.

Where by Statute of *Westm. 1. cap. 15.* the Accessaries before or after any Offence areailable, and where not. *Ibid. 100. & Hale's Pl. Cor. cap. 18.*

Bail where
*Stat indiffe-
renter*, &c.

That as Bail is ousted in some Cases in respect of the Greatness and Consequence of the Offence charged, so it is in respect of the Notoriety of the Offence: For Bail is, when *Stat indifferenter*, whether the Party be guilty or not; but when that Indifferency is removed, the Offender is notailable. *Hal. Pl. Cor. 100, 101. Westm. 1. cap. 15. Dal. cap. 114.*

Light Suspi-
cion, &c.

He that is taken for a light Suspicion, isailable; but if the Presumption be strong, or the Defamation great, the Justices may refuse to bail him: This lies in Discretion. *Hale's Pl. Cor. 102.*

Appeals by
Provers.

Where those that are appealed by Provers may, or may not, be bailed, and by whom. *Ibid.*

Of Death at
Discretion,

That in Appeals of Death, the Court in Discretion admit not the Defendant to Bail but upon weighty Cause. *S. P. C. 18.*

Party acquit-
ted, to be re-
manded.

And by *3 H. 7. cap. 1.* if the Party be acquitted within the Year upon Indictment, he is not to be discharged, but remanded

or

or bailed at Discretion, that an Appeal may be prosecuted against him.

[*Vid. ante pag. 91. Tit. Appeals.*]

But by Statute 28 E. 3. cap. 9. several Inquests that used to be before the Sheriff, are taken away, and consequently the Writ of Mainprize.

Writ of Mainprize.

[*Vid. Hale's Pl. Coron. 103, 104, &c.*]

No Person arrested upon any Writ out of the King's-Bench or Common-Pleas, upon which he is bailable by the Statute of 23 H. 6. c. 10. shall be forced to give Security, or enter into Bond with Sureties for his Appearance at the Day in such Writ, Bill or Process specified in any Sum above 40 l. unless the Cause of Action be expressed particularly: And where such Cause of Action is not expressed, all Sheriffs and Officers shall let to Bail Persons arrested upon 40 l. Security for their Appearance, according to the Statute of 23 H. 6.

By 13 Car. 2. Sess. 2. cap. 2. 40 l. Security.

Unless special Cause expressed.

Upon Appearance by Attorney in Term entred in Court, where the Process is returnable, the Bail-Bond shall be satisfied and discharged; and after such Appearance, no Amerciaments shall be estreated against any Sheriff or Officer for Want of Appearance: And if the Plaintiff in some Personal Action declare not before the End of the next Term after Appearance, Nonsuit shall be entred against him, and Costs taxed and levied: As in the Statute 23 H. 8. cap. 15.

Bail-Bond discharged upon an Attorney's Appearance.

Provided

Proviso.

Provided this Act extend not to a *Capiat Utlagatum*, Attachments upon Rescous, Attachments of Privilege, or any other Attachment for Contempt whatsoever, issuing out of any of the said Courts.

The Substance of the Habeas Corpus Act,
31 Car. 2. cap. 2.

Bail by the
Hab' Corp' Act.

It is enacted, Such Persons as are detain'd for any Crime, unless Felony or Treason, plainly expressed in the Commitment, being by *Habeas Corpus*, according to that Act in Vacation-time, brought before the Lord Keeper, or any Judge, shall be discharged upon their Entry into a Recognizance, with one or more Sureties for their Appearance in the *King's-Bench* the next Term, or at the next Assize or Sessions for the Place where the Commitment was, or where the Offence was committed, or properly cognizable; unless detain'd by legal Process, Order, or Warrant out of the same Court, or by Warrant under the Hand and Seal of some of the Judges, or Justices of Peace, for Matters by Law not bailable.

Trial for
High-Trea-
son upon a
Petition,
when.

And by the said Act, Such Persons as are committed for High-Treason, or Felony, plainly expressed in the Commitment, upon their Prayer or Petition in open Court, the first Week of the Term, or first Day of the Sessions of *Oyer and Terminer* or Gaol-delivery, to be brought to Trial, if not indicted the next Term, Sessions of *Oyer and Terminer*, or Gaol-delivery, after such Commitment,

ment, upon Motion by themselves, or any on their Behalf, the last Day of the Term, Sessions or Gaol-delivery, shall be bailed, unless it appear upon Oath, That the Witnesses for the King could not be produced that Term, Sessions or Gaol-delivery; and if not indicted and tried the second Term, Sessions of Oyer and Terminer, or Gaol-delivery, they shall be discharged.

And because many Persons charged with Petit Treason or Felony, or as Accessaries thereto, are committed upon Suspicion only, and bailable or not, according to the Circumstances, making the Suspicion more or less, which are best known to the Justices of the Peace that committed them, they shall not be removed or bailed by this Act.

Of Persons committed upon Suspicion, &c.

If the Lord Chancellor, or any of the Judges aforesaid, shall in the Vacation-time, upon View of the Copy of the Commitment, or Oath made, that such Copy was denied, deny a Writ of *Habeas Corpus*, he shall forfeit to the Prisoner, or Party grieved, 500 *l.* *Seet.* 10. Sheriff or Officer neglecting or refusing to obey the Writ, or to deliver a true Copy of the Commitment within six Hours after Demand, shall forfeit to the Prisoner for the first Offence 100 *l.* for the second Offence 200 *l.* and lose his Office, *Seet.* 5. (unless the Commitment be for Felony or Treason plainly and specially express'd in the Warrant of Commitment.)

Forfeiture of Officers, denying *Hab' Corpus*, &c.

By

Where excessive Bail, &c. ought not to be.

By Statute 1 *W. & M. Sess. 2. cap. 2.* it is declared and enacted, (*inter alia*) That excessive Bail ought not to be required; nor excessive Fines imposed, nor cruel and unjust Punishments inflicted; and that all Grants and Promises of Fines and Forfeitures of particular Persons before Conviction are illegal and void.

Concerning Bail to be given to the Action.

Infant no Bail.

IT is noted, That an Infant cannot be Bail, because he cannot enter into a Recognizance. 1 *Lill. Reg.* 155.

Common Bail how liable.

Where Common Bail is put in, it shall be Common Bail to all Declarations put in the same Term, *sedente Curia*, except Ejectments. 1 *Lill. Reg.* 148.

Bail a Witness.

How one that is Bail may be made a Witness for the Defendant.

Special Bail, how.

At what Time Special Bail is to be put in, as of *Hillary and Trinity Terms*; and when of *Easter and Michaelmas Term*. *Ibid.* 119.

Not for a greater Sum.

A Defendant shall not be compelled to put in Bail for a greater Sum than is contain'd in the Process; and if the Plaintiff shall declare for a greater Sum, the Bail shall not be liable to that Action. *Idem* 149.

3 *Ann. B. R.*

40 l. Bail, and 100 l. Damages.

The Judge ordered Bail for 40 l. and 100 l. Damages was recovered; and said, that in this Case the Bail were not liable. *Ibid.*

That

That where a Defendant cannot plead *Comperuit ad Diem*, to an Action upon a Bail-Bond, he must pay Costs upon staying of Proceedings, because 'tis a great Favour to him, *ibid. Hill. 7 W. B. R.* But this is now left to the Judges by 4 & 5 *Ann. c. 16.* Costs to be paid by Defendant.

When the Prisoner may surrender himself in Discharge of his Bail, and how the Render ought to be, &c. 1 *Lill. Reg. 150.* Also how to plead and conclude the Render of the Principal, 3 *Bulst. 192. Mo. 888. Pl. 1249. Latch. 149.* Time to surrender, and how to plead it.

A Bail-Bond was entred into to a Sheriff, and said not of what County; and it was also made to appear generally, and said not to what Action, and yet held good. 2 *Lev. 123.* Neither County, &c. mentioned in Bail-Bond.

Where a Bond is entred into to the Sheriff with an impossible Condition, the Bond it's said is single: But if the Statute of 23 *H. 6. c. 10.* be pleaded, it is void. 3 *Lev. 74.* Bail-Bond, with an impossible Condition.

By 4 & 5 *Ann. cap. 16.* Bail-Bonds are to be assigned over to the Plaintiff, and he may bring an Action in his own Name, but the Bond is to be stamp'd before an Action brought: And the Court may give such Relief to the Plaintiff or Defendant, and also to the Bail, as they shall think fit. Bail-Bonds to be assigned, &c.

[See before *Tit. Amendment.*]

Bill is of *Easter-Term*, and Bail put in of *Trinity-Term* following, yet the Bail are liable because of the Action depending in *Easter-Term*; *Aliter*, if the Bail be of *Easter-Term*, and the Bill filed of *Trinity-Term* following. Bill of *Easter-Term*, Bail of *Trinity*, &c.

1 *Lill. Reg. 151.*

M

If

Bill discharged upon
Render, &c.

If a Render be upon the Day of the Return of the second *Sci' fac'*, or other Process against the Bail, the Bail are discharged; but this must be upon a Motion, and Rule of Court; but if no *Ca' sa'* be return'd and filed, then it may be pleaded. *Ibid.*

Care must be taken that the Bail-piece be mark'd *Reddidit se.* *Ibid.* 158.

Principal charged.

Where a Man renders his Body in discharge of his Bail, the Plaintiff ought to charge him in Execution. *Ibid.* 154.

Death pleaded by Bail.

That the Bail may plead Death of the Defendant, before the Return of the *Capias ad Satisfaciendum.* *Ibid.* 152.

When.

But it shall not excuse the Bail, if the Party dies after the *Ca' sa'* return'd and filed, though before any *Sci' fa'* sued out against the Bail. *Ibid.*

Ex gratia Cur.

But (*ex gratia Cur'*) they do give the Bail Time to bring in the Defendant after a *Ca' sa'*, and before the Return of the second *Sci' fa'*. *Ibid.* & *Hut.* 47. *Cro. Jac.* 165.

Bail discharged.

But if the Defendant had died before a *Ca' sa'* return'd and filed, there the Bail had been discharged. *Ibid.* & 1 *Roll. Abr.* 250. *numb.* 6, 7. 1 *Jones's Rep.* 29. *Cro. Eliz.* 597.

Bail to the Action in B. R. in Debt, &c.

Note, In the Court of *Queen's-Bench*, if the Defendant be indebted to the Plaintiff by Bill, Bond, or otherwise, to the Value of 10 *l.* or upwards, he may be forc'd to put in good Bail.

In Slander and Trespas, &c.

But in Actions upon the Case for Words, for Ejectment or Trespas, Special Bail is not to be insisted on.

Neither

Neither is good Bail required against Heirs, Executors or Administrators, in any Action brought against them, unless in such Case where they have wasted the Goods of the Testator.

Heirs and Executors.

And by the Rules of the *Queen's Bench*, Special Bail is required in all Causes of Removal, be it by *Habeas Corpus*, Writ of Privilege, *Certiorari*, or the like: Except where the Defendant is sued as Executor or Administrator, for then he is not to give any Special Bail upon the Removal.

In Causes removed.

What shall be in Law an Acceptance of Bail. 1 *Lill. Reg.* 155.

Bail accepted.

For a Demonstration of what is aforesaid, per 2 *Brownl.* 293. *Hill.* 7 *Fac.* Executors and Administrators shall not find Special Bail for the Debt of the Testator; for it is not their Debt, nor shall their Bodies be liable to an Execution for it; 3 *Bulst.* 316. So ruled, though an Attorney was Plaintiff; and it was pretended he was entitled to have Special Bail by his Privilege. 1 *Sider.* 63. per *Cur.*

Examples and Authorities.

But in the Courts in *London*, and other inferior Courts, they always oblige Heirs and Executors to give Special Bail. 2 *Lew.* 104. per *Cur.*

Usage in London for Executors and Heirs.

So if there be a Judgment against an Executor for the Debt *de Bonis Testatoris*, and for the Damages only *de Bonis propriis*, he may bring Error, and have a *Supersedeas* without giving Sureties, according to 3 *Fac. cap.* 8. For though the Words of the Statute are general, yet it must be intended where Judgment is against the Defendant himself

Error by Executors and *Supersedeas*, without Sureties.

upon his own Bond, or where the Judgment is general against the Executor; for it would be unreasonable they should find Sureties to pay the whole out of their own Estate, *Cro. Jac.* 352. adjudged, *Sir Hen. Mildmay's Case*, *Cro. Car.* 59. *Litt. Rep.* 2, & 3. & *1 Lev.* 145.

The Recognizance, how to be worded, &c.

And upon taking Special Bail, the Recognizance is, *Ita quod*, he render his Body, which shall not be against an Executor but in case of a *Devastavit* only; and where the Action is founded upon a *Devastavit*, or his own Act, Special Bail must be given. *1 Sid.* 63.

Upon Removal of a Cause by Executors.

And, *1 Sid.* 418. though it was said to be the Course of the Court of *King's-Bench*, that Executors upon Removal of a Cause out of inferiour Courts, should give Special Bail; yet it was said to be unreasonable, and was therefore ruled in that Case, that Common Bail should be accepted.

When Executors were relieved against Special Bail upon a Removal.

And see *Litt. Rep.* 81. That in such Case Executors must give Bail; but *vide* the Case of *Lawrence and Bligh*, *2 Jones* 82. where 'tis said, That in such Case Executors had used to give Bail till Judge *Hale's* Time, when it was resolved they should be delivered upon Common Bail: See *2 Lev.* 204. where said, That the Judges *Kelyng* and *Hale* had denied Special Bail in such Cases; and *vide 1 Lev.* 245, 268.

Removal by an Heir.

So if one is sued as Heir in an inferiour Court, and the Cause is removed by *Habeas Corpus*, the Heir need not put in Special Bail; *Lawrence and Bligh*, *2 Lev.* 204. *2 Jones* 82. before which it was said, there was no Precedent one Way or the other.

Where

Where the Court will bail a Prisoner that appears in Court upon a Return of a *Habeas Corpus*. *Mod. Caf. 242.* Upon an *Hab' Corp'.*

In an Action of *Scandalum Magnatum*, upon Motion the Court ordered Special Bail to be given. *Pasch. 15 Car. 2. inter Com' Stamford and Goodall, Raym. 74. 2 Mod. 215.* Action upon *Scan' Mag'.*

But where upon Motion the Court will order Common or Special Bail to be given. *Vide 1 Brownl. 90. 1 Sid. 183. 1 Lev. 39.* Bail upon moving the Court.

In Debt upon a Bond for Performance of Covenants, according to the Breach assigned. *1 Sid. 63.* Upon a Bond to perform Covenants.

Upon an Affidavit of a great Mayhem, and that he intended to declare in Trespass. *Hill. 17 & 18 Car. 2. 1 Sid. 276.* Upon a great Mayhem.

The Court ordered a special *Latitat*, with an *Acetiam*, and that so there should be Special Bail; and 'tis made a *Quære*, If it may be so in Case upon an Affidavit of great Damage; but 'tis clear, this is so by the usual Practice in *B. R.* in *Assumpsit*. In Case.

[See after.]

Acetiam Bill' ipsius A. versus prefat' C. pro non Performacon', Promission' & Assumpcon', ipsius C. secundum, &c. Upon an *Assumpsit*.

Or thus ;

Pro Fraccon' Promission' & Assumpcon' ad dampnum ipsius A. 20 l.

Or thus ;

Pro 20 l. super Assumpconem.

In Trespass for taking his Goods, it runs thus ;

- Trans'.** *Pro capc'one & asportac'one Bonor' & Catallor' ipsius A. ad dampnum 20 l. secundum, &c.*
- Detinue.** *Pro detenc'one Bonor' & Catallor' ipsius A. ad valenc' 40 l. secundum, &c.*
- Trover.** *Pro converc'one & disposic'one Bonor' & Catallor' ipsius A. ad valenc' 40 l. secundum.*
- Covenant.** *Pro Fraccon' Convencon' ad dampnum ipsius C. 60 l. secundum cons', &c. Vide 1 Instruct. Clerical', last publish'd, 37.*

By which Means the Sheriff can take Bail according to Cause of Action, and Damage alledged.

Words, Ejectment or Trespass.

But if the Cause of Action is for Words or Ejectment, or Trespass only, no Special Bail is required : But, as before is observ'd, if it be dangerous Assault and Battery, as the Breaking a Man's Skull, the Indangering the Loss of an Eye, or a Mayhem of any other useful Member ; the Plaintiff may petition one of the Justices, setting forth his Case ; and the Judge, as he sees Cause, will order the Defendant to be held to Bail in such Sum as he shall think fit ; and then 'tis usual to insert in the Writ, *Acetiam Bill', &c. pro 20 l. per Ordin', ibid. & 38. Vide 1 Sid. 307.* Special Bail ordered *per Cur.* in case of a notorious Battery ; but *1 Mod. 2* denied ; and *vide 1 Roll. Abr. 335. Pl. 14. 1 Instruct. Cler. 253, &c.*

Vide eundem for the Manner of setting forth the Cause of Action in the Process of the *Common-Pleas*, for Appearance, or Special Bail.

For the *Common-Pleas*.

Also note, That Appearances upon Writs in the *Common-Pleas*, must be entred with the Filazer within eight Days after the Return of the Process, as is observ'd for filing Common Bail in the *Queen's-Bench*.

Appearance to be entred, and when.

Note, In all Actions upon Penal Statutes, as upon 13 *Eliz.* of Fraudulent Conveyances, &c. the Defendant, it's said, need not to put in Special Bail, *Mich. 2 Jac. St. George's Case, Yelv. 53.* said to be according to the Practice of *B. R.* nor upon a By-Law, &c. By-Law, &c. unless there be a Special Rule. *Pract. Regist.*

Upon Penal Statute.

That no Special Bail is required in Account; but otherwise in Debt upon an Account. 2 *Roll. Rep. 53. vide Noy 28. 1 Lev. 300.*

Account.

What Bail shall be found for a Feme Covert, *vide Cro. Eliz. 370. Cro. Jac. 445. 1 Mod. 8. Stiles 475.*

Feme Covert.

And whether one Partner must put in Bail Partners for another, *vide 1 Mod. 45.*

How the Bail in an inferiour Court must render the Principal in a Writ of Error brought in *B. R.* 1 *Lill. Reg. 152.*

Upon Error.

Where a *Scire facias* may be sued upon a Bail taken by Commissioners in the County, according to Statute 4 & 5 *W. & M. cap. 4. Lutw. 1287.* either in *Middlesex* or the County; but if taken before a Judge of the Court,

Sci' fa' upon Bail taken before Commissioners.

A Review of all the Statutes,

Cause to be
shewn.

the *Sci' fa'* must be in *Middlesex*. 3 *Ann. B.R. Lill. Reg.* 157. *Aliter* upon a Writ of Error.

The Plaintiff ought, if required by a Judge, to shew his Cause of Action, or a Declaration which requires Special Bail. 1 *Lill. Reg.* 153.

Supersedeas for
a Prisoner.

Where a *Supersedeas* will be granted to a Prisoner in Custody, for Want of a Declaration or Removal. *Ibid.*

Payment
pleaded.

That the Bail may plead Payment of the Sum recovered, but not of a lesser Sum. 2 *Lev.* 212.

Judgment
against two,
Bail upon
Sci' fa' and
Ca' fa' against
one.

Two became Bail, and Judgment was against them upon a *Sci' fa'*; and a *Ca' fa'* was sued out against one of them, and good; for though the *Sci' fa'* be joint, yet the Execution may be several; also a *Ca' fa'* will well lie, though the Recognizance is to be levied *de Bonis & Catallis*, 1 *Lev.* 226. because it is the Law and Usage of the Court.

Excepting
against Bail.

How and when to except against Bail put in before a Judge, and when to take away the Bail-piece, and file it. 1 *Lill. Reg.* 155.

At Attorney's
Suit.

And note, That if an Attorney, &c. bring an Action for his Fees, he shall have Special Bail. *Ibid.*

For an out-
lawed Person.

See before, pag. 13, 14. where the Sheriff may take a Bail-Bond, or an Attorney's Hand, for the Appearance of a Defendant upon an Outlawry. *Secund' 7 & 8 W. 3. c. 11.*

Audita Quer'
for the Bail.

That an *Audita Querela* lies for the Bail where the Judgment is reversed by the Principal; but the Bail cannot have any Advantage

tage of an Error, in the Judgment against the Principal. 1 *Lill. Reg.* 156.

And though the Bail upon a *Sci' fa'* may plead a Release to the Principal, yet they cannot plead a Writ of Error depending. *Ibid.*

No Bail to be put in upon a Writ of Error upon Debt, upon a Judgment recovered upon a Bond, with a Condition to perform Covenants; because the Words of the Statute are only for Payment of Money. 1 *Lew.* 260.

Bail put in in Error to prosecute with Effect, and the Recognizance forfeited for not assigning Errors. 1 *Roll. Rep.* 329.

If an Original be sued in *London*, and Bail put in, and the Declaration laid in another County; though it be good against the Defendant, yet his Bail are discharged, and not liable to a *Sci' fa'*. 3 *Lew.* 235, 245.

A Bail-Bond dated before, but not sealed till after the Return of the Writ, and the Defendant after *Oyer* pleaded, the Bond was delivered after the Return of the Writ, and traversed it was delivered the Day it bore Date: And the Plea was held to be good, and the Bond void. *Hill. 5 W. & M. B. R.* 1 *Lill. Reg.* 158.

That Bail upon an *Habeas Corpus* or *Certiorari*, shall be liable for no more than the Sum expressed in the Plaint return'd; and this was adjudged upon great Consideration. *Mich. 35 Car. 2. Edwards* against the Bail of *Overton*.

Release pleaded.

No Bail in Error upon a Bond, &c.

Recognizance forfeited.

Declaration mislaid, and Bail discharged.

Where the Bail-Bond was dated before, but not sealed till after the Return.

Bail, where liable for no more than the Sum expressed.

Where

Upon a Plaintiff removed out of an inferior Court.

Where a Plaintiff is levied in an inferior Court, and afterwards removed into B. R. and Bail put in, and the Plaintiff declares in Case, but afterwards they agreed to waive the Action, and give Judgment in Debt, the Bail are discharged, because this is not the same Action. *6 W. & M. 1 Lill. Reg. 159.*

Thus with the Statutes, we have run through most of the modern Practice relating to *Bail*: Yet there are many Things more relating to this Branch in the First Volume of *D'Anvers's General Abridgment*, Tit. *Bail*.

However, to make this Head more complete, we will look in some Particulars lately adjudged, set forth in the new Book entitled, *Modern Cases*.

A Woman to be discharged upon Common Bail.

That if a Woman be arrested, let the Cause of Action be what it will, she shall be discharged upon Common Bail; but if the Husband be arrested, he shall not be discharged by giving Bail for himself, without giving it for his Wife likewise, where she is made a Party. *Modern Cases, fol. 17.*

Poor Prisoner discharged, taken up again, &c.

Where a poor Prisoner had been discharged and taken up again, and gave Bail, and confessed the Action, and that Execution might go against his Goods; then the Plaintiff took out such Execution, and likewise sued the Bail: And the Court discharged the Bail, and also the Prisoner after Surrender. *Idem 22. [See after.]*

Twenty Days Time to except against Bail after Notice ; but after Exception to them, there is no set Time to justify or change them for better. *Modern Cases* 24, 25.

Said, That if one bring a *Certiorari* to remove an Indictment, and does not give Bail to try it according to the Statute, it is no *Supersedeas* : And a Record once filed in the Court of *B. R.* is never sent back, tho' alledged it might be sent back the same Term. *Idem* 33. [See *Tit. Certiorari.*]

Bail was granted *Nisi* in Error, upon a Bond for the Return of a Ship. *Idem* 38.

Idem 77. If one give a Warrant of Attor-ney to confess Judgment for saving Bail harmless, though the Debt be not paid, he can't sue Execution before Damnification.

The Sheriff took one Bail-Bond upon a Debt by Three jointly and severally : The Plaintiff took an Assignment, and would have the Sheriff amerced, *Sed non allocatur*, tho' agreed that the Bond was not according to the Statute, being for a joint Appearance to several Actions. *Idem* 122.

And if after an Assignment accepted, the same Bail be to the Action that were Bail to the Sheriff, though they can't be denied, yet the Plaintiff may except against them ; and if they don't justify, may go on with Amerciaments against the Sheriff. *Ibid.*

Debt upon a Recognizance given in the *Common-Pleas* brought in *C. B.* And it was moved to have the Action discharged, for that the Defendants had surrendered the Principal even before the Action commenced.

As to Time of Exception and Justification.

Bail upon a *Certiorari* to remove an Indictment.

In Error.

Upon a Warrant to save Bail harmless.

One Bail-Bond upon a Debt by 3.

If same Bail to the Action that were to the Sheriff.

Debt in *B. R.* upon the Bail's Recognizance in *C. B.*

Ans.

Simile, upon
a Recogni-
zance in B. R.

Ans^w. That by a Rule of Court here, if Debt be brought upon a Recognizance of this Court, the Defendant has eight Days in full Term to render the Principal. Whereby the Defendants have now equal Advantage in case of Debt, and *Sci' fa'* upon a Recognizance: But said and allowed, that if there was no such Rule in the *Common-Pleas*, that he should have the same Sauce here upon this Action, as in the *Common-Pleas*.

The Rule of
B. R. is to a-
void Mis-
chief.

Also, that formerly they would not suffer an Action upon a Recognizance in this Court, because of the greater Mischief it would be to the Defendant than a *Sci' fa'*; but that the Action was always maintainable, and the Rule here is in Avoidance of that Mischief.

The ancient
Proceedings
on Bail-Bonds
in B. R.

Per Cur'; That anciently there could be no Proceedings on Bail-Bond till the next Term, and that it was a great Grievance to put it in Suit till after a convenient Time, though otherwise practised by the Attornies of the *Common-Pleas* meerly to make Work for themselves. *Ibid. Mod. Cases, 132, 133. Pasch. 3 Ann. in B. R.*

What Time
Bail ought to
be put in.

Idem 226. said, That if a Writ be returnable in one Term, the Defendant ought to put in Bail in that Term; that is, at any Time before the Effoin-day of the next Term, and till then 'tis irregular to proceed on the Bail-Bond; but that one in the mean Time may take an Assignment upon it, and a Warrant.

When the
Bail may ren-
der the Prin-
cipal.

Idem 231. Per Cur'; The Bail may render the Principal when they please; and take him up upon a *Sunday*, and confine him till

next

next Day, and then render him: And so may a Sheriff take an Escaper, though it be on a *Sunday*, for it is only a Continuance of the former Imprisonment. *Mich. 3 Ann. in B. R.*

Idem 238. Per Cur'; If Bail surrender the Principal at or before the Return of the second *Sci' fa'*, it is good, though there be not immediate Notice to the Plaintiff; for the End of Notice is twofold, *viz.* one, that the Plaintiff may, if he pleases, charge him in Execution; the other, that he be at no further Trouble or Charge in proceeding against the Bail: Yet for Want of Notice, the Bail shall pay his further Charges.

At or before the Return of the second *Sci' fa'*.

Yet it is there observed, That if any Time after the Return of the *Capias* the Bail surrender the Principal at a Judge's Chamber, and he thereupon is committed to the Tipstaff, from whom he escapes, or is rescued, that will not be a good Surrender, because it's Indulgence to the Bail to surrender after the *Capias* return'd: *Secus* if it be before a *Capias* return'd; for to surrender before, or at return of a *Capias*, is Matter of Right: And now by the Rule of Court, upon the first Sort of Surrender, the Principal ought to be two Days in the Marshal's Custody to make it a good Surrender. *Mich. 3 Ann. in B. R.*

Indulgence to the Bail to surrender the Principal after the Return of a *Capias*.

Again, *Per Cur'*; If the Defendant upon *Habeas Corpus* remove a Cause from an inferior Court, in which there ought to have been Special Bail below, he shall not thereby put the Plaintiff into a worse Condition, but be compelled to give in Bail above; yet

Upon removing a Cause by *Hab' Corp'* out of an inferior Court.

as

as to the Sum which the Bail are to justify themselves worth, that may be moderated as the Court sees Occasion. *Idem* 242. *Mich. 3 Ann. in B. R.*

Where the Q.'s Charge upon the Principal ought not to prejudice the Bail in their Surrender.

Idem 247. The Bail in Circuit-time charged the Principal with 4000 l. Action, and committed him to the *Poultrey-Compter* in order to remove him by *Habeas Corpus*, and rendered in Discharge of themselves to the Prison of the *King's-Bench*; and he was soon after in the Circuit-time charged with the Queen's Debt: And the Bail having brought an *Habeas Corpus* to remove and render him, the Attorney-General opposed it, alledging the Counter was safer than the Marshal's Prison, &c.

Per Cur. It might be, if he had first been taken at the Queen's Suit; but the Bail having taken him up here, the Queen's Charge ought not to prejudice them: And he was turn'd over.

Where an *Acetiam* was put into the Writ for 40 l. &c.

In an Action of Assault and Battery, an *Acetiam* for 40 l. was by Consent put into a Writ made returnable in *Michaelmas Term*, and Bail put in *Hillary Term* after, and 100 l. Damages given: And it was alledged, that a Rule was made *Anno 22 Car.* That if the Recovery was for more (as in this Case) than was mentioned in the *Acetiam*, the Bail should not be charged at all *in ista Actione*.

The Chief Justice remember'd a Case, where the Declaration and Recovery were for more than the *Acetiam*, and a *Remit* to level it with the *Acetiam* was denied.

And

And upon Search, the Rule alledged being not to be found in the Clerk of the Rule's Book; P. Chief Justice, there was Reason for such a Rule, that the Plaintiff should recover no more than mentioned in the Writ; and that if less be recovered, 'tis no Inconveniency to the Bail; and if there were no Bail insisted on but Common Bail, it is just the wrong Doer should answer whatsoever is recovered: And that though *Acetiams* in outrageous Batteries were allowed to charge with a good Sum, yet reasonable Bail ought to be accepted on such *Acetiams*. And so agreed by all, that Bail by no Means ought to answer for more than was mentioned in the *Acetiam*.

A reasonable Rule, that the Plaintiff should recover no more than mentioned in the Writ.

Justice P. put the Question, That if when a Recovery is for more, it were reasonable to discharge the Bail for good and all?

If the Bail here ought to be discharged for good and all.

Resp. per Ch. Just. That the Words of the Rule were, That the Bail should be look'd upon as none, *in ista Actione*.

Upon an Objection, That this Bail was put in of *Hillary Term* by Consent, upon good Consideration without Surprize: The Secondary inform'd the Court, that the Filing of Bail without a Writ taken out before or after, was void.

Answered by other Clerks; That that Rule was understood thus, *viz.* That if Bail were filed by Consent, and no Writ already taken out, nor taken out within eight Days after, the Bail was void; that is, the Defendant was not obliged to accept of a Declaration: But if he did accept one, it would be

How the Rule is to be taken of filing Bail by Consent, without a Writ.

be well ; and this seemed a reasonable Explanation : But at last the whole was referred to the Secondary to examine, and (says the Reporter) *Quere quid inde venit.*

Case lies for
extravagant
Acetiams.

But he further notes, That the Ch. Justice wished the Attornies to beware of charging extravagant *Acetiams* ; for otherwise an Action of the Case would lie for holding to excessive Bail. *Vide Mod. Cases* 266, &c. *Garibaldo versus Cagnoni* in *B. R. Mich.* 3 *Annæ.*

Also it is there further noted, That the same Point in regard to a Recovery alone, the *Acetiam* came in question the same Term, in the Case of *Bovey vers' Wheeler.*

Forms of De-
claring.

Common Forms of declaring upon Recognizances against the Bail, *idem* 159. agreeing with the common Form in a *Sci' fa'.*

Certiorari.

[See after *Tit. Certiorari*, and of Recognizances to be given upon Removal by *Certiorari.*]

To a *Sci' fa'*
against the
Bail, who
pleaded no
Capias, &c.

A *Sci' fa'* was brought against the Bail, who pleaded no *Capias* against the Principal : The Replication sets forth a *Capias*, (and *Non est inventus* return'd) which appear'd to be tested a Year after the Judgment (there being no *Sci' fa'* previous to it).

Per Holt Ch. Just. The Plaintiff, in intitling himself against the Bail, never mentions any Thing of the *Capias*, and there is full Title made for the Plaintiff ; and your Plea is only an Excuse that there was no *Capias*, and the Plaintiff shews there was a

Capias,

Capias, which may be regular, and shall not be intended ill till you shew it: And the Reason of it is, That I am not bound to render the Principal till I know what Execution the Plaintiff will chuse; whether he will chuse to have his Body, which he makes appear by suing a *Capias*; for he might have sued an *Elegit* or *Fi fa*: *Judic' pro Quer' per Judic' pro Cur'*, *Mod. Cas.* 304, 305. 3 *Ann. in B. R. Quer'.*

Note, It was said, That if it appear'd there was no *Sci' fa'* previous to the *Capias*, it was but Error, and not available to the Bail; but if it were actually void, still it ought to come on the Bail's Side. [See after.]

Per i Jones 139. If the Defendant dies after *Capias*, and before Return of it, Bail is discharged.

An Escape was brought against a Sheriff, and a Motion was to make the Bail-piece, and *Reddidit se* according to the Writ, (the Bail-Bond having mistaken the Plaintiff's Name.)

Per Cur', It can't be; the Bail must be according to the Bail-Bond, and not according to the Writ, or the Return thereof. *Mod. Cas.* 309.

Debt upon a Recognizance against Bail; Bail plead no Plea, that there was no *Capias* against the Principal; *Repl'*, that there was; *Rejoin'*, that a Writ of Error was allow'd before the Return of the *Capias*, &c. And upon a Demurrer, the Rejoinder was adjudged to be a Departure from the Plea. *Mod. Cas.* 139.

N

Note,

be well ; and this seemed a reasonable Explanation : But at last the whole was referred to the Secondary to examine, and (says the Reporter) *Quere quid inde venit.*

Cafe lies for
extravagant
Acetiams.

But he further notes, That the Ch. Justice wished the Attornies to beware of charging extravagant *Acetiams* ; for otherwise an Action of the Cafe would lie for holding to excessive Bail. *Vide Mod. Cases* 266, *Gr. Garibaldo* versus *Cagnoni* in *B. R. Mich. 3 Annæ.*

Also it is there further noted, That the same Point in regard to a Recovery alone, the *Acetiam* came in question the same Term, in the Case of *Bovey* vers' *Wheeler.*

Forms of De-
claring.

Common Forms of declaring upon Recognizances against the Bail, *idem* 159. agreeing with the common Form in a *Sci' fa'.*

Certiorari.

[See after *Tit. Certiorari*, and of Recognizances to be given upon Removal by *Certiorari.*]

To a *Sci' fa'*
against the
Bail, who
pleaded no
Capias, &c.

A *Sci' fa'* was brought against the Bail, who pleaded no *Capias* against the Principal : The Replication sets forth a *Capias*, (and *Non est inventus* return'd) which appear'd to be tested a Year after the Judgment (there being no *Sci' fa'* previous to it).

Per Holt Ch. Just. The Plaintiff, in intitling himself against the Bail, never mentions any Thing of the *Capias*, and there is full Title made for the Plaintiff ; and your Plea is only an Excuse that there was no *Capias*, and the Plaintiff shews there was a

Capias;

Capias, which may be regular, and shall not be intended ill till you shew it: And the Reason of it is, That I am not bound to render the Principal till I know what Execution the Plaintiff will chuse; whether he will chuse to have his Body, which he makes appear by suing a *Capias*; for he might have sued an *Elegit* or *Fi fa*: *Judic' pro Quer' per Judic' pro Cur'*, *Mod. Cas.* 304, 305. 3 *Ann. in B. R. Quer'.*

Note, It was said, That if it appear'd there was no *Sci' fa'* previous to the *Capias*, it was but Error, and not available to the Bail; but if it were actually void, still it ought to come on the Bail's Side. [See after.]

Of a previous *Sci' fa'* in this Case.

Per I Jones 139. If the Defendant dies after *Capias*, and before Return of it, Bail is discharged.

An Escape was brought against a Sheriff, and a Motion was to make the Bail-piece, and *Reddidit se* according to the Writ, (the Bail-Bond having mistaken the Plaintiff's Name.)

The Bail must be according to the Bail-Bond, &c.

Per Cur', It can't be; the Bail must be according to the Bail-Bond, and not according to the Writ, or the Return thereof. *Mod. Cas.* 309.

Debt upon a Recognizance against Bail; Plea, that there was no *Capias* against the Principal; *Repl'*, that there was; *Rejoin'*, that a Writ of Error was allow'd before the Return of the *Capias*, &c. And upon a Demurrer, the Rejoinder was adjudged to be a Departure from the Plea. *Mod. Cas.* 139.

Bail plead no *Capias*, &c.

Prisoner under 100 l. discharged, &c.

Note, A Prisoner for Debt under 100 l. was discharged pursuant to the late Act, and afterwards was taken again for above 100 l.

Per Cur', He must find Special Bail: And as to the Discharge upon Common Bail by Vertue of the Act, said, the Judges might do it as well as the Justices of Peace. *Mod. Caf.* 301. *Mich. 3 Ann. B. R.*

Tender of Principal, &c.

Idem 11. said, One cannot move to stay Proceedings upon a Bond upon Payment of Principal, Interest and Costs, till Bail be put in; for till then, the Parties are not in Court: But *Quer.* the late Act made for Amendment of the Law; *antea* 41.

Note, There are several Matters mentioned before under the Letter A. relating to *Bail*, as *pag.* 11, 13, 14, &c. 118, 119, &c. which I refer to your Observation, as also to the Table of this Treatise.

Also many more Particulars and Cases relating to *Bail*, are largely treated of in the first Volume of *D'Anvers's General Abridgment*, tit. *Bail*.

We will only here add the Orders of Court for taking *Bail* before the Commissioners in the Country, and so conclude this Head.

ORDERS

ORDERS for taking Bail before Commissioners in the Country.

Note, **I**T is enacted, Stat. 4 W. & M. That King's-Bench. Bail may be taken in the County before a Special Commissioner for that Purpose authorized by the Judges of the King's-Bench, Common-Pleas, and Barons of the Exchequer, respectively. Stat. 4 & 5 W. & M. c. 4.

In the Taking and Filing whereof, it is to be observed;

That in the [*King's-Bench*,] there are Orders put forth by the Judges for that Purpose, to the Effect following:

First, It is ordered, That the Bail-piece shall be fairly Drawn and Ingrossed in Parchment, in the Form following, viz. Bail-piece, how to be drawn.

A. B. Attorn' } Midd' ff. Johannes Doe de
pro Def'. } Illingt' in Com' pred'
Gen' Traditur in Ball'
super Cepi Corp'.

Johanni Denn de Hackney
in Com' pred' Gen'.

Rich' Fen' de Highgate in
Com' pred' Gen'.

Capt' & Cognit' ...
die ... 1696. coram
A. B. un' Commis-
sionar', &c.

ad sectam

Richardi Roe.

N 2

And

And in taking of the Recognizance, these like Words must be used, (*viz.*)

Words to be used.

You (calling the Bail by their Names) do jointly and severally undertake, That if the Defendant [naming his Name] shall be condemned in this Action at the Suit of the Plaintiff [naming his Name], he shall satisfy the Costs and Condemnation, or render himself into the Custody of the Marshal of the Marshalsea of the Court of [Queen's-Bench], or you will pay the Costs and Condemnation for him.

*Cepi' Corp',
Hab' Corp'.*

And if any Bail be given upon any Action or Actions, removed out of any Inferiour Court by Writ of *Habeas Corpus*, and returnable in the Court of [Queen's-Bench,] then instead of writing *super Cepi Corpus*, as before, you must write *super Brev' de Hab' Corp'*; and instead of writing the Plaintiff's Name, (as aforesaid) you must write, *ad sectam Quer' in Querel'*; and the Cognizors must undertake, that if the Defendant be condemned at the Suit of the Plaintiff or Plaintiffs in the Plaint, that he shall satisfy the Costs and Condemnation, or render his Body, &c. as aforesaid.

Affidavit to be made.

Secondly, It is ordered, That the Affidavit for the due Taking of every such Bail, shall be made either before some Judge of the [Queen's-Bench,] to whom the Bail shall be transmitted, or before some Person who shall have Power to take Affidavits in Mat-

ters

ters and Causes depending in the said Court.

Thirdly, It is ordered, That all Bails Bails to be taken by any Commissioner within the transmitted. Distance of Forty Miles from the Cities of *London* and *Westminster*, shall be transmitted to the Lord Chief Justice of the Court, of [*Queen's-Bench*,] or to one of the Justices of the said Court, within Eight Days after the Taking thereof: And all Bails taken by any Commissioner above the Distance of Forty Miles from the said Cities of *London* and *Westminster*, shall be transmitted within Fifteen Days after the Taking thereof, unless all the said Justices shall be in their Circuits, and then as soon as any one of them shall be returned to his Chamber in one of the *Serjeants-Inn*.

Fourthly, Also every Commissioner is Book to be to have a Book kept purposely for Entring kept. the Names of the Defendant and his Bail, and of the Plaintiff, as it is in the Bail-piece, and the Time of the Taking thereof, and of the Name of him by whom such Bail shall be transmitted; and also the Name of the Attorney for the Defendant. And,

Fifthly, It is further ordered, That the Plaintiff's Attorney shall be at Liberty to repair to the Commissioner's Book for the Names of the Bail, to the end that they may enquire of the Sufficiency of them:

Excepting
against the
Bail, &c.

A Review of all the Statutes,

And if they are found insufficient, they may except against them within Twenty Days after the said Bail is transmitted, and Notice to the Plaintiff or his Attorney, of the Taking thereof: And in that Case the Defendant must either put in better Bail, or the Cognizors of such Bails must justify themselves in open Court, either by Affidavit taken before such Commissioner that took the said Bail, or by Oath made in Court, or before one of the Judges of the said Court.

G. Eyre.

W. Dolben.

J. Holt.

ORDERS

ORDERS to be observed by Commissioners impowered by Commission, in pursuance of an Act of Parliament for taking Special Bails in the Country upon Actions and Suits depending, or to be depending, in their Majesties Court of Common-Pleas at Westminster.

First, It is ordered, That before any Bail be taken by Vertue of the said Act, a true Copy of the Writ on Parchment, to which the Defendant is to put in Bail, shall be brought to the Commissioner before whom such Bail is to be taken; and thereupon the Recognizance or Bail-piece shall be fairly drawn and engrossed on the said Parchment Copy, in this or the like Form, as the Case shall be, viz.

Common-Pleas.

That a true Copy of the Writ be on Parchment, &c.

*Manu captos Johannes Denn de Blackbarne-
sley in Paroch' de Settle in Com' Ebor' Gen'
& Richardus Fenn de eadem Gen'.*

A. B. Attorn' } Uterque M. in x l.
pro Def'. } Pars ipsa in xx l.

*Cap' & Cognit' decimo die Martii Anno
Dom. 1692. de bene esse coram me A. B.
Un' Commissionar'.*

If the Defendant be not present, then the Bail are usually bound in double the Sum in the Writ, otherwise only single.

The Condition of which said Recognizance shall to be this Effect, viz.

The Condition of the Recognizance.

You (naming the Defendant if present) do acknowledge to owe unto the Plaintiff xx l. And you (naming the Bail) do severally acknowledge to owe unto the same Person the Sum of x l. apiece, to be levied upon your several Goods and Chattels, Lands and Tenements, upon Condition, That if the Defendant be condemned in the said Action, he shall pay the Condemnation, or render himself a Prisoner to the Fleet for the same: And if he fail so to do, you (naming the Bail) do undertake to do it for him.

Affidavit of the due Taking.

Secondly, It is ordered, That the Affidavit of the due Taking of every such Bail, shall be made either before some Judge of the *Common-Pleas*, to whom the Bail shall be transmitted, or before some Person who shall have Power to take Affidavits in Matters and Causes depending in the said Court.

How to be transmitted, and when.

Thirdly, It is ordered, That all Bails taken by any Commissioner within the Distance of Forty Miles from the Cities of *London* and *Westminster*, shall be transmitted to the Lord Chief Justice of the Court of *Common-Pleas*, or to one of the Justices of the said Court, within Ten Days after the Taking thereof: And all Bails taken by any Commissioner above the Distance of Forty Miles from the said Cities of *London* and *Westminster*, shall be transmitted within 20 Days

Days after the Taking thereof, unless all the said Justices shall be in their Circuits, and then as soon as any one of them shall be returned to *London* out of his Circuit.

Fourthly, Also every Commissioner is to have a Book kept purposely for entring exactly the Names of the Defendant and his Bail, and of the Plaintiff, as it is in the Bail-piece, and the Time of the Taking thereof, and the Name of him by whom such Bail shall be transmitted.

Every Commissioner to keep an Entering-Book.

Fifthly, It is further ordered, That the Plaintiff's Attorney shall be at Liberty to repair to the Commissioner's Book for the Names of the Bail, to the end that they may enquire of the Sufficiency of them; and if they are found insufficient, they may except against them within 20 Days after the said Bill is transmitted, and Notice to the Plaintiff or his Attorney of the Taking thereof: And in that Case the Defendant must either put in better Bail, or the Cognizors of such Bail must justify themselves in open Court, either by Affidavit taken before such Commissioner that took the said Bail, or by Oath made in Court, or before one of the Judges of the said Court.

To which Plaintiff's Attorney may repair to accept, or except against the Bail, &c.

Geo. Treby.

Ed. Nevill.

John Powell.

Tho. Rokeby.

Bank

Bankrupts.

34 Hen. 8. altered.

BY Statute 34 H. 8. 4. the Lord Chancellor, Treasurer, &c. shall take Order with Bankrupts Bodies, Lands and Goods, for the Payment of their Debts.

[But this was altered by the ensuing Statutes.]

Who is a Bankrupt by 13 Eliz. c. 7.

By Statute 13 Eliz. 7. if any Person (Subject or Denizen) exercising Trade, doth depart the Realm, conceal him or her self, take Sanctuary, suffer him or her self to be arrested, outlawed, or imprisoned without just Cause, to the Intent to defraud Creditors, being also Subjects born, he shall be deemed a Bankrupt.

Authority of Lord Chancellor, &c. to grant Commissions, &c.

The Lord Chancellor or Keeper, upon Complaint in Writing against any such Bankrupt, may appoint honest and discreet Persons to take such Order with the Body of such Bankrupt, wheresoever found, and also with the Lands, (as well Copy as Free) Hereditaments, Annuities, Offices, Writings, Goods, Chattels and Debts, wheresoever known, which the Bankrupt hath in his own Right, with his Wife, Child or Children, or by Way of Trust to any secret Use; and to cause the said Premises to be searched, rented, appraised, and sold for the Payment of the Creditors ratably according to their Debts, as in the Discretion of such Commissioners (or the most Part of them) shall be thought fit.

The

The Vendees of Copyhold-Lands shall compound with the Lord for their Fines, and then shall be admitted, and make Fealty according to the Custom of the Manor.

Composition upon Copyhold Lands sold.

Such of the Commissioners as execute the Commission, shall (upon the Bankrupt's Request) render him an Account, and also the Overplus (if any be) unto him, his Executors, Administrators or Assigns.

Commissioners to render Account to the Bankrupt.

The Commissioners have Power to convene before them, any Person accused or suspected to have any of the Bankrupt's Goods, Chattels or Debts, or to be indebted unto him; and for Discovery thereof, to examine upon Oath, or otherwise, as they (or the most Part of them) shall think fit.

Their Power to convene Persons before them.

The Person refusing in that Behalf to disclose or swear, shall forfeit the double Value of the Goods, Chattels, or Debts so concealed, to be ordered and employed by the Commissioners, or the most Part of them.

Forfeitures of Persons refusing.

The Person demanding or detaining any of the Bankrupt's Lands, Goods, Chattels or Debts, (not justly due) shall forfeit the double Value; to be levied, recovered and employed as aforesaid.

So of Persons detaining Lands or Goods.

If after all the Creditors are paid out of the Bankrupt's Estate, and the Forfeitures, any Surplusage shall remain, it shall be by the Commissioners divided betwixt the Queen, her Heirs and Successors, and the Poor of the Place where such Bankrupt happens to be.

Dividend of the Surplusage.

If

Proclamations to be made.

If any Person indebted, absent himself from his usual Place of Abode, upon Complaint the Commissioners (or the most of them) shall award five Proclamations to be made upon five sundry Market-days near the said Place, commanding him to render himself to the Commissioners, or one of them. Which if he do not within convenient Time he shall be adjudged out of the Queen's Protection; and the Party wittingly receiving or concealing him, shall (upon Information of the Commissioners, or the most Part of them) suffer such Imprisonment, and pay such Fine, as the Lord Chancellor or Keeper shall think fit.

Remedy for a Creditor not satisfied.

The Creditor not fully satisfied by this Means, may (notwithstanding this Act) take his Course at Law against the Bankrupt for the Residue of his Debt.

Disposal of purchased Estates, &c.

The Estate which happeneth to the Bankrupt by Purchase or Descent, after he becomes a Bankrupt, shall also be extendable by the Commissioners, or the more Part of them.

Estates conveyed *bonâ fide*.

This Act shall not extend to annual Estates of Land (Free or Copy) by him conveyed before he became Bankrupt, so that they were so conveyed *bonâ fide*, and not to such as were privy to his fraudulent Purpose.

Who is a Bankrupt by 1 Jac. 15.

By Statute 1 Jac. 15. every Subject born, or Denizen, who using Trade shall depart the Realm, keep House, absent him or herself, take Sanctuary, suffer him or her self to be arrested for Debt not justly grown due,

to be outlawed, imprisoned, fraudulently procure his Person to be arrested, or Goods attached, depart from Home, make any fraudulent Grant of Lands or Goods, with intent to deceive his other Creditors, being subjects born, or being arrested lie in Prison six Months or more, shall be adjudged a Bankrupt.

The Bankrupt hereby described shall be proceeded against as is limited by the Statute of 13 *El.* 7. in like manner as if he had been there so fully described.

Any Creditor shall be received to take his Part, if he come in within four Months after the Commission sued out, and pay his Part of the Charge, otherwise the Commissioners may proceed to Distribution.

If a Bankrupt grant his Lands or Goods, or transfer his Debt into other Mens Names, except to his Children upon Marriage (they being of Age to consent) or upon valuable Consideration, the Commissioners may (notwithstanding) sell them, and such Sale shall be good.

If upon Warning in Writing left Three Times, at the most usual Place where he dwelt within one Year before he became Bankrupt, he appear not before the Commissioners, they may cause him to be proclaimed at some publick Place or Places: And if upon five such Proclamations he yield not himself, they shall by Warrant cause him to be brought before them to be examined concerning his Estate, &c.

Process against such.

Time for Creditors coming in.

What Lands or Goods the Commissioners may sell.

If Bankrupt appear not upon Warning left in Writing.

If

If he refuse to
be examined,
&c. Pillory.

If the Bankrupt shall refuse to be examined, the Commissioners shall commit him until he conform: Or if being examined he commit Perjury in Prejudice of the Creditors to the Value of 10 l. or more, he shall be indicted for the same; and after Conviction, stand upon the Pillory, and have one of his Ears nailed thereto, and cut off.

If suspected
Persons do
not appear,
&c.

If any Person be known or suspected to detain any of the Bankrupt's Estate, and do not appear or send some lawful Excuse at the next Meeting after Warning given him or appearing, refuseth to be examined upon Oath, the Commissioners by Warrant shall cause him to be arrested, and if he still refuse, shall commit him until he submit.

Witnesses to
have their
Charges.

The Witnesses shall have convenient Charges allowed them ratably by the Creditors and such of them as shall be perjured, and their Procurers, shall be indicted upon the Statute of 5 Eliz. which see in *Perjury*.

Forfeitures
recoverable.

The Forfeitures of this Act shall be recovered by the Creditors, and (the Costs of Suit deducted) shall be ratably divided amongst them.

Creditors
may recover
the Debts
assigned.

The Commissioners have Power to assign the Bankrupt's Debts to the Creditors, and by such Assignment they shall be recoverable by the Creditors, as their proper Debts.

Debts paid
before No-
tice.

No Debtor shall be prejudiced by Payment of his Debt to the Bankrupt, before he have Notice that he is Bankrupt.

The Commissioners shall make such Account to the Bankrupt, and likewise pay him the Overplus, as by 13 *Eliz.* 7. is ordained; and the Creditors being all satisfied, the Bankrupt may recover the remaining Debts.

Commissioners to account, &c. to the Bankrupt.

If any of the Commissioners, or other Person employed by them, be sued for any Act done by Force of the Commission, the Defendant may plead Not guilty, or justify, and the whole Matter shall be brought in Evidence, according to the very Truth thereof: And if the Verdict pass for the Defendant, he shall have his Costs.

Commissioners, &c. may plead Not guilty.

The Commissioners shall proceed to Execution, notwithstanding the Death of the Bankrupt.

Proceedings if the Bankrupt die.

By Statute 21 *Jac.* 19. all Laws made against Bankrupts, shall be beneficially construed for the Creditors.

21 *Jac.* c. 19.

All Persons of Trade, and Scriveners that procure Protection, (except of Parliament) and all such as by exhibiting Petitions endeavour to compel their Creditors to take less than their due Debts, or to gain Time for the Payment thereof, or being indebted 100 *l.* or more, shall not satisfy the same within six Months after the same grows due, and the Debtor arrested, or within six Months after the original Writ sued out, and Notice given thereof, or left in Writing at the Place of his Abode, or after Arrest lie six Months in Prison, or escape out of Prison, or procure enlargement by putting in Common Bail, shall be adjudged a Bankrupt: And in case of

Who shall be a Bankrupt by this Statute.

of Arrest or Imprisonment, from the Time of the Arrest.

This Act 21
Jac. 19 as to
the Description
of Bank-
rupts, &c.
made void.

[But note, That by an Act made Anno
10 *Annæ Reginae*, it is enacted, That the Act
21 *Jac.* 1. for the further Description of a
Bankrupt, &c. and also every other Act re-
lating thereto, shall be from and after the
20th of *April* 1712, repealed and made void;
and no Person within the said Descriptions
shall be adjudged to be within the Statutes
of Bankrupt.

A Saving of
former Dis-
positions.

That no Act, Sale or Disposition of any
the Estate of such Persons within the said
Descriptions, or any Distribution of the
same under any Commissions of Bankrupt,
before the said 20th of *April*, shall be im-
peached.]

Again, the said Stat. of 21 *Jac.* 1. cap. 19.
goes on :

Proceedings
against such
Bankrupts.

Commissions, and other Proceedings pro-
vided by 13 *Eliz.* 7. and 1 *Jac.* 15. shall be
also pursued against him that is described to
be a Bankrupt by this Act ; and Proceedings
provided by this Act shall be pursued against
him that is described to be a Bankrupt by
13 *Eliz.* 7. and 1 *Jac.* 15.

Bankrupt's
Wife exami-
ned.

The Bankrupt's Wife shall also be exami-
ned upon Oath ; and if she appear not, or
refuse to be examined, she shall incur the
Punishment inflicted by the former Laws in
like Cases.

Bankrupt to
be pillory'd.

The Bankrupt that fraudulently conceal-
eth his Goods, or tendreth not some just
Reason why he became Bankrupt, shall af-
ter

ter Conviction be set upon the Pillory, and lose one of his Ears.

The Commissioners may by themselves or others, break open the Bankrupt's House, Chests, &c. where his Estate is, or is reputed to be, and then seize and order his Body and Estate, as by the former Laws is ordained.

Commissioners may break open Houses, Chests, &c.

In the Distribution of the Bankrupt's Estate, no more Respect shall be had unto Debts upon Judgment, Recognizances, Specialties with Penalties, or the like, than to other Debts.

No Respect unto Debts.

The Commissioners may proceed, when the Bankrupt by Fraud makes himself Accomptant to the King.

If Bankrupt pretend to be the King's Accomptant.

Another Man's Goods in the Bankrupt's Possession and Disposition, shall be also distributed by the Commissioners, as the Bankrupt's own Goods.

If he hath another's Goods in his Possession.

The Commissioners Grant of the Bankrupt's entailed Lands shall be good, except when the Reversion or Remainder is in the King.

Entailed Lands granted.

Conditional Estates granted by the Bankrupt, may be redeemed by the Commissioners, and afterwards sold as his other Estate.

Conditional Estates granted.

No Purchaser shall be impeached by this or the former Act, unless the Commission be sued forth within five Years after he becomes Bankrupt.

Purchaser saved.

This Act, as also all the former, shall extend to Strangers, (both Aliens and Denizens) as well as to Subjects born, as well to

The Extent of this Act.

be relieved, as also to be subject to the Penalty thereof.

14 Car. 2. c. 24.
Saving to
Adventurers
in Compa-
nies, &c.

By Statute 14 *Car. 2. cap. 24.* Whereas divers Noblemen and Gentlemen, not bred up in Trade, have notwithstanding put great Stocks into the *East-India* and *Guinea* Company; it is declared, That no Persons Adventurers for putting in Money or Merchandize into the said Companies, or for adventuring or managing the Fishing, called, *The Royal Fishing-Trade*, shall be taken or reputed a Merchant or Trader within any Statutes for Bankrupts, or be liable to the same.

Provided, That Persons trading and trafficking in any other Way or Manner than in the said Companies or Fishing, shall be liable to the Commission of Bankrupts.

Reversal of a
Judgment,
&c.

A Verdict and Judgment against Sir *J. Wolaston* as a Bankrupt for trading in the *East-India* Company, reversed and made void.

Provided, Not to avoid any Sale or Disposition of his Lands or Goods made by Vertue of the Commission of Bankrupts.

Pitkin a
Bankrupt.

By Statute 3 *Ann. cap. 12.* An Act for the Relief of the Creditors of *Tho. Pitkin* a Bankrupt, and for the Apprehending of him, and the Discovery of the Effects of the said *Tho. Pitkin*, and his Accomplices. [See after, 202.]

30 Days No-
tice for a
Bankrupt, &c.

By Statute 4 & 5 *Ann. cap. 17.* If any Persons after the 24th of *June 1706.* shall be Bankrupt, and against whom a Commission of

of Bankrupts shall issue, shall not in Thirty Days after Notice thereof in Writing, left at their usual Abode, and Notice in the *Gazette* of the Meeting of the Commissioners, surrender themselves to the Commissioners, and submit to be examined upon Oath, and conform to the Statutes made against Bankrupts, and upon such Examination discover how, to whom, and upon what Consideration they have disposed any their Goods or Estate, and all Books, Papers and Writings relating thereto, and deliver up to the said Commissioners all such Estate, Books, &c. as at the Time of such Examination shall be in their Power, their, their Wives and Childrens, necessary wearing Apparel excepted, then such Bankrupt, in case of wilful Omission, being convicted by Indictment or Information, shall suffer as a Felon without Benefit of Clergy.

The Lord Chancellor may enlarge the Time for Surrendring and Discovering the Estate, as he shall think fit, not exceeding 60 Days; so as such Order for Enlarging the Time be made five Days before the Time for Surrendring and Discovering.

Lord Chancellor, &c. may enlarge Time.

The Commissioners, or major Part, shall have Power to send for such Persons as they are informed, or believe can give an Account of any Act of Bankruptcy committed, and examine them on their Oaths, and otherwise as such Commissioners are by Law authorized concerning such Bankrupt's Estate, touching such Acts of Bankruptcy: And if any Person, upon Payment or Tender of reasonable Charges, shall refuse or neglect

How and whom the Commissioners may examine.

to appear, or shall refuse to be sworn, or being Quakers to take the Solemn Affirmation, or to answer :

May commit
Persons to
Prison.

Then the Commissioners, or major Part, may direct Warrants to apprehend such Persons refusing to appear, and commit them to such Prisons as they shall think fit, there to remain without Bail or Mainprize, until they submit to be examined: Provided no Person be obliged to travel above twenty Miles to be so examined.

The Judges
to grant War-
rants, &c.

Upon Certificate of the Commissioners, or major Part, of a Commission taken out, and Person proved Bankrupt, the Judges of the Courts at *Westminster*, and Justices of Peace, are required to grant Warrants for Apprehending and Committing to the Gaol of the County such Person, and the Gaoler is required forthwith to give Notice to one of the Commissioners of such Person's being in his Custody: And the Commissioners are to send their Warrant forthwith for the Delivery of such Bankrupt to the Persons authorized thereby, to convey such Bankrupt to them to be examined, as also to seize the Estate of such Bankrupt.

Proviso, If he
submit.

Proviso, That if such Person apprehended within 30 Days submit to be examined, and in all Things conform as if he had surrendered, then such Person shall have the same Benefit as if he had voluntarily surrendered.

Felon's

Felon
be divid
lief by su

Person
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Cent. ou
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sioners,
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all Debts
And if p
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that the
Bankrup
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Provisi
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submit t
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ditors, t
Assignee
Every
the Tim
himself

Felon's Goods forfeited by this Act, shall be divided amongst Creditors, seeking Relief by such Commission.

Division of
forfeited
Goods.

Persons surrendring and conforming themselves as in this Act, shall be allowed 5 *l. per Cent.* out of the neat Produce of the Estate, to be paid by the Assignees of the Commissioners, so as the 5 *l. per Cent.* amount not to above 200 *l.* and shall be discharged from all Debts owing at the Time of Bankruptcy : And if prosecuted for Debt due before, shall be discharged on Common Bail, and plead that the Cause of Action accrued before Bankruptcy, and give the Special Matter in Evidence ; and if Judgment be against the Plaintiff, the Defendant to recover his Costs.

Allowance of
5 *l. per Cent.* to
Persons con-
forming.

Proviso, If the neat Proceed of the Bankrupt's Estate amount not to 8 *s.* in the Pound above Charges, then the Bankrupt shall not be allowed the 5 *l. per Cent.* but shall be allowed so much as the Assignees and Commissioners think fit.

Exception.

Persons accepting Trust, and concealing or protecting Estate of Bankrupt, which shall not in 30 Days after Commission issued, and Notice thereof, discover such Estate in Writing to one of the Commissioners, and submit to be examined, shall forfeit 100 *l.* and double the Value, to the Use of the Creditors, to be recovered in the Name of the Assignees.

Trustees, &c.
to forfeit.

Every Person who within 60 Days after the Time allowed the Bankrupt to surrender himself and conform, shall discover any of

3 *l.* per Cent.
allowed to
Discoverers.

Accounts to
be adjusted.

In what Cases
the Bankrupt
shall have
no Advan-
tage.

Three Meet-
ings in 30
Days.

General Issue
pleaded.

Where Bank-
rupts have
been Game-
sters.

the Bankrupt's Estate before the major Part of the Commissioners, shall be allowed 3 *l.* per Cent. out of the neat Proceed, to be paid by the Assignees.

Where mutual Credit hath been given between the Bankrupt and others, and the Accounts unballanced, the Commissioners or Assignees may adjust the Accounts, and take the Ballance due; and the Person Debtor shall not be obliged to pay more than due on such Ballance.

Proviso, That nothing herein shall grant any Advantage to Bankrupt, who upon Marriage of any of his Children hath given above 100 *l.* unless he prove by his Books, or Oath before the Commissioners, that at the Time thereof he had Sufficient to satisfy his Debts.

Proviso, That the Commissioners, within the said 30 Days, shall appoint not less than three Meetings, the last to be on the 30th Day, limited for the Bankrupt's appearing.

Persons sued for any Thing done in pursuance of this Act, may plead the General Issue, and give the Special Matter in Evidence.

Proviso, That nothing herein shall give any Advantage to any Bankrupt, who shall have lost in one Day 5 *l.* or 100 *l.* in Twelve Months preceding their Bankruptcy, in playing at any Game, in bearing Part in Stakes or Wagers, or betting on the Side of such as play, run or ride.

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This Act to be in Force for three Years, Continuance.
and from thence to the End of next Session
of Parliament.

All Persons becoming Bankrupts, and Advantage to
against whom a Commission issued before other Bank-
the 10th of *March* 1705. who voluntarily rupts.
before the 24th of *June* 1706. surrender
themselves to the Commissioners, and sub-
mit to be examined, and in all Things con-
form, as aforesaid, shall have the Benefit of
this Act.

Proviso, If such Persons voluntarily sur- Felony, if
rendering themselves, omit to discover and fraudulent.
deliver their Estates, and to do as this Act
directs, such Persons shall be adjudged
Fraudulent Bankrupts; and being convict,
shall suffer as Felons, without Benefit of
Clergy.

Proviso, That no Discovery, pursuant to Commissioners
this Act, shall entitle such Bankrupt to the Certifi-
Benefits of this Act, unless the Commis- cate of the
sioners, or the major Part, shall under their Bankrupt's
Hands and Seals certify unto the Lord Chan- Conformity.
cellor, that such Bankrupt hath in all Things
conformed himself to this Act, and that there
doth not appear to them any Reason to
doubt of the Truth of the Discovery, or
that the same is not a full Discovery; and
unless such Certificate be allowed by the
Lord Chancellor, Keeper, &c. or two of
the Judges of the Courts at *Westminster*, to
whom the same shall be referred by the
Lord Chancellor, &c. and the Creditors
shall be heard, if they think fit, against the
Making and Allowance of such Certifi-
cate.

No Expences
for Eating or
Drinking.

There shall not be allowed any Monies for Expences in the Eating or Drinking of the Commissioners, or any other Persons: And if any Commissioner order such Expence, every such Commissioner shall be disabled to act in such, or any other Commission of Bankrupt.

Bankrupts,
and their
Concealers,
to suffer as
Felon.

By Statute 5 *Ann. cap. 22.* If any Persons who shall become Bankrupt, or any others with their Consent or Privity, shall after the 25th of *April 1707.* remove, conceal, or imbezel any Monies or Effects whereof they, or any Person in Trust for them, are possessed of, or entitled to, to the Value of 20 *l.* or any Books of Accounts, Bonds, Bills, or any Writings relating thereunto, with Intent to defraud their Creditors, every such Person so becoming Bankrupt, shall suffer as a Felon, without Benefit of Clergy, and his Estate shall be divided amongst his Creditors.

Certificate to
be signed by
the Creditors.

No Bankrupt shall be discharged from his Debts, or have any Benefit by 4 & 5 *Anna, cap. 17. (vide Sect. 2.)* unless the Allowance and Certificate by the said Act directed to be made and confirmed, be signed by four Parts in five in Number and Value of the Creditors, except the Allowances and Certificates already made, which shall be good and effectual.

Securities given to Creditors, to be void.

All Securities given by any Bankrupt, or other Person for him, to the Use of any Creditor, for the Securing the Payment of any Money due from such Bankrupt (at the Time of Bankruptcy) between his Bankruptcy

cy and Discharge, to induce such Creditor to sign such Allowance or Certificate, shall be void.

Upon Commission of Bankrupts issuing after the 25th of April 1707. the Commissioners shall give Notice thereof in the *Gazette*, and appoint Time and Place for the Creditors to meet; which Meeting, for Places within the Bills of Mortality, (to those Assignees) shall be at *Guildhall, London*; and the Commissioners shall assign the Estate to such only as shall be chosen by the major Part of the Creditors present; which Assignees shall keep Books of the Bankrupt's Estate, with Liberty to the Creditors to inspect them.

Notice of
Commissions,
&c. to be put
in the *Ga-
zette*.

Proviso, That the Commissioners, for the better Securing the Estate, may immediately make Assignees removable at the Meeting of the Creditors, if they think fit; which Assignees shall deliver and assign the Estate in their Hands, to Assignees so chosen by the Creditors: And if any of the first Assignees shall neglect for fourteen Days after Notice of the Choice of such new Assignee (and of their Consent to accept such Assignment by Writing under their Hands) to make such Assignment and Delivery, such first Assignees shall forfeit 100 *l.* above the Value of such Estate as came to their Hands, to be divided amongst the Creditors as the Bankrupt's Estate, and to be recovered in any the Courts of Record at *Westminster*, by such Person as the major Part of the Creditors shall appoint to sue for the same, with Costs of Suit.

The Commis-
sioners may
immediately
make As-
signees re-
movable, &c.

Such

**Composition
by the As-
signees.**

Such Assignees, or the major Part of them, may make Composition with Debtors to the Bankrupt, where reasonable, in full Discharge of such Debts.

**What Credi-
tors may peti-
tion for a
Commission.**

No Commission of Bankrupts shall be issued out upon the Petition of one or more Creditors, unless the single Debt of such Creditor amounts to 100 *l.* or more, or unless the Debt of two Creditors or more petitioning amount to 150 *l.* or more, or unless the Debt of three or more petitioning amount to 200 *l.* or more, and the Creditors petitioning shall give Bond in the Penalty of 200 *l.* conditioned for proving their Debts, and the Party a Bankrupt: And if such Debts not due, or the Party not proved a Bankrupt, but such Commission taken out fraudulently, the Lord Chancellor, upon Petition of the Party grieved, may assign such Bond to recompence him in Damages.

**Persons not
to be deemed
as Bankrupts.**

Proviso, That no Farmer, Grasier, or Drover of Cattle, or Receiver General of Taxes granted by Parliament, shall be entitled to the Benefits given by this Act, or the said Act of 4 & 5 *Annæ*, cap. 17. or be deemed a Bankrupt.

This Act shall continue in Force 2 Years, and from thence to the End of next Session of Parliament.

**Brerewood and
Pitkin.**

Stat. 5 *Ann. c. 23.* is an Act to subject the Estate of *Thomas Brerewood* to the Creditors of *Tho. Pitkin*, notwithstanding any Agreement or Composition made with the Creditors of the said *Tho. Pitkin*. [*Vid. antea*, 194.]

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Note, By the aforesaid Act, *Anno decimo Annae Reginae*, it is enacted, That the Discharging any Bankrupt by Act 4 *Annae*, or any other Act relating to Bankrupts, from the Debts by him owing at the Time of his becoming Bankrupt, shall not discharge any other Persons who were Partners with the said Bankrupt in Trade at the Time he became Bankrupt, or then stood jointly bound, or had made any joint Contract with such Bankrupt for the same Debt from which he was discharged; but such Partners shall be liable to pay such Debts, and to perform such Contracts, as if the Bankrupt had not been discharged.

Partners with Bankrupts liable to pay Debts, and perform Contracts.

[See many Cases adjudged relating to Bankrupts, in the 1st Volume of D'Anvers's General Abridgment, *Tit. Bankrupts.*]

Cases referr'd to.

Action by an Assignee of a Bankrupt by Commissioners, how to be laid, *Mod. Cas.* 131. Also, if after Assignment another receive the Money, an Action will lie for the Assignee upon a Promise to himself, because the Receipt of Money after Assignment is a Contract with him: And every Contract or Agreement, *per H. Ch. Just.* is an express Promise not in Word but in Deed, which is as strong, and that there is no such Thing as a Promise in Law: And that Acceptance of a Bill of Exchange, is an express Promise to pay it. *Vide 2 Saund. 239. 1 Vent. 10.*

Action by an Assignee of the Commissioners, when and how to be laid.

See the Exposition of 13 *Eliz. cap. 7.* of 13 *Eliz. c. 7.* Bankruptcy, 2 *Rep. 25, 26.*

Et

Inn-keeper,
&c. no Bank-
rupt.

Et vide 3 Levinz, 309, 310. That an Inn-keeper, *quatenus* an Inn-keeper, cannot be a Bankrupt, nor a Farmer, nor a Sutler, &c. *Show. Rep. 269, 270, &c.* But who shall, and who shall not, *vide D'Anvers's Abr. 686, 687.* Also see before as to *Farmers, Grasers, Drovers, &c. 5 Ann. cap. 22.*

Witness to
have no
Copy of In-
terrogatories,
&c.

Said, The Court will not compel the Commissioners to give a Witness a Copy of the Interrogatories, or a Copy of his Depositions, though he swears that he was illiterate, &c. *Lill. Reg. 163. Hill. 8 W. B. R.*

Evidence
disallowed.

That the Commissioners must not bring Evidence in to be examined before them by Arrest, for it is a Misdemeanor. *Hill. 3 W. B. R.*

Bankrupt's
Goods, when
bound.

That the Bankrupt's Goods are bound by the *Teste* of the Writ, if sued out the same Day it bears Date; but not if afterwards. *1 Lev. 174.*

Assignment
by general
Words.

Where Commissioners assign over a Debt, as of 100 *l.* due from *J. S.* though this is a Debt due upon Judgment, yet this Assignment by general Words shall be sufficient. *Mich. 8 W. B. R. 1 Lill. Reg. 163.*

No Discovery
until Interro-
gatories.

That no Man is bound to make a Discovery of his Estate upon Oath, until Interrogatories are exhibited against him. *Idem, Mich. 9 W. B. R.*

Bankrupt's
Partner.

That where there are two Partners, and one is a Bankrupt, the Assignee shall have but a *Moiety* jointly with the other Partner, *Lill. Reg. 164.* But see before, where Bankrupts Partners are liable to pay Debts, and perform Contracts by Stat. *Anno 10 Ann. Reg.* That

That an *Assumpsit* lies not for Assignees for the Money for which the Bankrupt's Goods were sold, but Trover, 3 *Lev.* 192.

Trover, not *Assumpsit*.

Yet see before concerning an Action by an Assignee of a Bankrupt, *Mod. Cas.* 131.

That a Bankrupt may recover in his own Name, until assigned over to Assignees.

When Bankrupt may recover.

Lutw. 701.

That the Commissioners cannot after Assignment bring in the Person who claims the Goods to swear, whether they are his Goods or no; because by the Assignment they have executed their Authority. 1 *Lill.*

Commissioners Authority executed.

Reg. 164.

How the Commissioners shall proceed against the Person of a Bankrupt, see the Statutes before: Also, how the Bankrupt's Wife shall be sworn, 1 *Fac.* 1. *cap.* 15. Also how the Commissioners may commit the Bankrupt upon Refusal to answer upon Interrogatories, *Stat. eodem.*

How Commissioners may proceed.

That Payment before Notice to the Bankrupt, is good; also that Money in Execution belongs to the Bankrupt, being in *Custodia Legis.* 1 *Fac.* 1. *cap.* 15. *Cro. Car.* 166, 176, 148.

Payment to the Bankrupt before Notice.

That the Commissioners may sell Goods without Deed inrolled, but Lands they cannot. 2 *Co.* 26. *a.* 1 *Vent.* 360, 361.

Bargain and Sale.

To what Conveyances of his Land, the Act 13 *Eliz.* *cap.* 7, &c. shall extend, *vide ante Stat. eundem, &c.*

Conveyances.

That the Commissioners shall, upon the Bankrupt's Request, declare how they have bestowed his Lands, and render him the Overplus. 13 *Eliz.* *cap.* 7. *Sect.* 2.

Commissioners to account with the Bankrupt.

That

When a Creditor may come in.

That a Creditor within four Months, or before Contribution, may come into the Statute 1 *Fac. cap. 15. sect. 4.* And 'tis said, Distribution cannot be till after four Months, *Lill. Reg. 166.*

Simile.

That after a first Distribution, no Creditor can come in to disturb it; but may come in for the Residue, whereof no Distribution was made. 2 *Chanc' Cas' 154.*

If Bankrupt dies before Distribution.

That if a Bankrupt dies after a Commission dealt in by the Commissioners, and before Distribution, the Commissioners may proceed as if living. 1 *Fac. cap. 15. Sect. 18.*

If the King also dies.

And if the Bankrupt dies, and after the King dies, a new Commission may be granted, and they may proceed upon the new Commission, where the old left off. *Chanc' Cas' 193, 194.*

Some Observations concerning Cases and Precedents relating to Bankrupts.

Derivation of the Word, &c. 4 *Inst. 277.*
Statutes against them, as before set forth, with Alteration as to 21 *Fac. cap. 19.*

If Shoemaker may be a Bankrupt, *Cro. Car. 31. Cro. Eliz. 268. 3 Mod. 330.*

So if Weaver or Dyer, for Action lies for calling them Bankrupts, *Cro. Fac. 585.*

So of a Drover, 1 *Fon. 304. Cro. Car. 282.*

But not for Labourers, Husbandmen, &c. *Cro. Car. 31.*

Not for a Victualler of the Fleet, 1 *Vent. 270. 3 Keb. 451.*

Not

Not for Inn-keeper, *Cro. Car.* 549. *e contra*,
Jon. 437. 3 *Lev.* 309, 310. 3 *Mod. Rep.* 327.
 Of Buying and Selling, *Marsh.* 34, 35. *Cro.*
Car. 549. 3 *Mod.* 328.
 Buying here, and Selling beyond Sea, &c.
Raym. 375. 2 *Jon.* 141. *Goodw.* 26.
 Having a Ship, 1 *Sid.* 411. 1 *Vent.* 29.
 Of Joint Stock, 2 *Keb.* 487.
 Of Concealing himself, &c. *Palm.* 325.
 1 *Vent.* 5.
 If Outlawed, 1 *Lev.* 13. 2 *Sid.* 177. 1 *Keb.*
 11.
 Intending to defraud Creditors, 3 *Mod.*
 309. 1 *Sid.* 411. 2 *Keb.* 453. 3 *Lev.* 17.
 Of Leaving off Trade, 1 *Sid.* 411. 1 *Vent.*
 29, 166. 2 *Keb.* 487. 8 *Co.* 181. 4 *Inst.* 277.
 Jury on Action are to find him a Bankrupt,
Raym. 337. 2 *Sid.* 176.

From what Time :

If from his first Arrest, 3 *Lev.* 57, 58.
Raym. 479. 1 *Vent.* 370, 371.
 If five Years after a Purchase, 1 *Lev.*
 13, 14. 2 *Sid.* 69, 114, 176. 1 *Keb.* 11, 12, &c.
 722.

As to Commissions upon Complaint :

Statute 34 H. 8. cap. 4. 13 *Eliz.* cap. 7.
 No Commission without Complaint,
 2 *Chanc' Rep.* 191.
Grantable de Jure, Ibid.

How

A Review of all the Statutes,

How Commissioners shall proceed:

See the several Statutes.

Commissioners subject to Parties Action,

4 *Inst.* 277.

Bill in *Canc'* for Discovery, 2 *Chan' Rep.* 73.

1 *Vent.* 324. 2.

Statute 1 *Fac. cap.* 15. to empower them to examine Bankrupt; and *per Par'* 8. if he refuses, to commit him.

1 *Fac. cap.* 15. *Par.* 10. Warrants to be issued out.

21 *Fac.* 19. Bankrupt's Wife to be examined.

— Doors may be broken open.

Commissioners how to proceed against his Person.

See the several Statutes, *Noy* 140.

How they may dispose and sell, &c.

Per 13 *Eliz. cap.* 7.

Copyhold; *Ibid. Par.* 3. *Cro. Car.* 569, 550.

1 *Jon.* 451. 3 *Lev.* 327. 2 *Co.* 26. a. *Mo.* 594. *Pl.* 805. *Hut.* 43.

Of Bankrupt's giving Money with his Son, 3 *Lev.* 59.

If Lessee a Bankrupt, 1 *Chanc' Rep.* 71.

Damages and Costs assignable, 1 *Jon.* 215. *Cro. Car.* 166. 2 *Keb.* 372.

Money levied upon *Ca' Sa'*, *Cro. Car.* 166, 176. in *Custod' Legis.*

Simile upon an Extent, *Cro. Car.* 148.

1 *Fon.* 202, 203.

Vid. 1 *Fac. cap.* 15. *Par.* 9.

Sale by Deed inrolled, or without, 2 *Co.* 26.

1 *Vent.* 360, 361. 1 *Fon.* 196, 197.

A compendious Declaration in *Assumpsit*, upon a Bill of Exchange by an Assignee of the Commissioners of Bankrupts, and Judgment *pro Quer'*, 1 *Lutw.* 274.

Case upon Statute of Bankrupts for an Assignee of the Creditors, upon a Promise made to the Bankrupt, *Cl. Ass.* 282. 2 *Mod. Intr.* 64. *Clift.* 75.

Bar, in Debt for Rent, That the Plaintiff was a Bankrupt, and Defendant paid to the Commissioners Assignees; 1 *Lutw.* 701. *Thomps.* 167. *vid. Goodwin* 271.

Of Bargains and Sales; also of Inrolments thereof, and of Publick Registers.

AS to a Bargain and Sale; it is to be observed in the first Place, That by Statute 27 *H. 8. cap.* 10. it is enacted, That where any Person or Persons stands, or is seised of or in any Honours, &c. Lands, Tenements, Rents, Services, &c. to the Use, Confidence, or Trust of any other Person or Persons, or Body Politick, by reason of any Bargain, Sale, Feoffment, &c. such Person or Persons, &c. that have any such Use, &c. shall be deemed and judged in lawful Seisin, Estate and Possession thereof, to all Intents and Purposes, of or in such

Upon Bargain and Sale to Uses, *Cestuy que use* deemed in lawful Seisin and Possession, &c. by 27 *H. 8. c.* 10.

P like

A Review of all the Statutes,

like Estates as they have in the Use, &c. And the Estate, Right, and Possession of him and them so seised, to any Use, &c. shall be deemed and adjudged in him, or them, which have the Use, &c. after such Quality, Manner, &c. as they had before, in or to the Use, &c.

Equity in
Chancery be-
fore this Sta-
tute.

For it may be noted, That before the former Statute, if a Man had bargained and sold his Lands for Money, by this only an Use had pass'd; and the Chancery would have compelled an Execution thereof according to Conscience. 1 Co. 87, 100. b.

Where no
Use of a Way,
or of a Thing
not *in esse*.

Now if *A.* by Indenture inroll'd, bargains and sells Land to *B.* and his Heirs, with a Way over other of the Lands of *A.* this is void as to the Way, for nothing but an Use passes by the Deed; and there can be no Use of a Thing not *in esse*, as a Way, Common, &c. before they are created, Cro. Jac.

If of a Rent
de novo.

189. but 'tis made a *Quære* of a Rent *de novo*, by reason of the special Clause in 27 H. 8. c. 10. Par. 4 & 5. That if any Person shall stand seised, to the Use or Intent that another shall have a Rent, &c. Vide 1 Jon. 179.

As to Inrolments of Bargains and Sales.

27 H. 8. c. 16.
Inrolments to
be at Westmin-
ster, &c.

By 27 Hen. 8. cap. 16. No Manors, Lands, Tenements, or other Hereditaments, shall pass from one to another, whereby any Estate of Inheritance of Freehold shall be made or take Effect, or any Use thereof to be made, by reason only of any Bargain and Sale, except by Writing indented, sealed and

and inrolled in one of the Courts at *Westminster*, or else within the County or Counties where the Lands, &c. so bargained and sold lie, before the *Custos Rotulorum*, and two Justices of Peace, and the Clerk of the Peace of, &c. or two of them, whereof the Clerk of the Peace to be one: The same Inrolment to be made within six Months after the Date of the same Writings indented, &c. Provided, &c. *Vide postea.*

That this extends only to Estates of Inheritance and Freehold, and therefore Bargains and Sales for any Number of Years need not be by Deed indented or inrolled.
2 *Inst.* 671.

Extends only to Estates of Inheritance and Freehold.

But if before Inrolment the Bargainor levies a Fine, or makes a Feoffment to the Bargainee, and his Heirs; and after the Bargain and Sale is inrolled, the Bargainee shall be in by the Fine, or Feoffment, by reason of this Word [*Only,*] and the Estate at Common Law, shall be preferred. 2 *Inst.* 672. 4 *Co.* 71. 1 *And.* 285. adjudged.

If a Fine be levied before Inrolment, Com' Law shall be preferred.

Hob. 222. cited, and said, The latter Conveyance extinguished the Use, without which the Bargain and Sale operates not. 1 *And.* 113. adjudged, and great Stress laid upon this Word [*Only,*] *Cro. Eliz.* 917. *Owen* 70.

Great Stress upon the Word *Only.*

Relv. 124. Because by the taking of Livery, the Use which passed by the Bargain, &c. is destroyed. 2 *And.* 161. *Cro. Car.* 218. 2 *Bulst.* 34.

If Use be destroyed by Livery.

Bargain of
Lands in *Lon-*
don.

But if there be a Bargain and Sale of Lands in *London*, the Land by Custom passes without Inrolment; and the Conveyance is perfect by the Delivery of the Deed, without other Circumstance.

When the Li-
very is void.

If a Feoffment, &c. is made to the Bargainee, the Livery of Seisin to him is void; for he had that in Possession before, and he is in by the Bargain, &c. *Yelv. 124. 2 Inst. 676.*

Where the
Estate will
pass without
Inrolment.

That if Lands are passed for Money only, the Deed ought to be inrolled; but if for Money and natural Affection, the Estate will pass without Inrolment, *Stil. 204. per Roll. 1 Lev. 56.* And the Diversity taken where natural Affection is Part of the express Consideration, and where not.

If the Words,
of Bargain
and Sale, be
not used.

It may be a Bargain and Sale within this Act, though the Words are not used; for whatever Words, upon a valuable Consideration, would have raised an Use of any Lands, &c. at Common Law, the same amount to a Bargain and Sale within this Act: As if a Man by Deed, &c. for a valuable Consideration, covenants to stand seised to the Use of another, &c. *2 Inst. 672.*

Writing.

It must be in Writing, and not by Print or Stamp. *2 Inst. 672.*

Inrolment in
Parchment
only.

Though the Deed may be either in Parchment or Paper; yet the Inrolment must be in Parchment only, for that is implied; when an Inrolment is to be in any of the Courts of Record at *Westminster*, and in the Clause of Inrolment by the Clerk of the Peace, 'tis particularly provided, That he

he shall sufficiently inroll and ingross in Parchment, &c. 2 *Inst.* 373.

If several seal the Deed, and but one acknowledge it, and thereupon the Deed is inrolled; this is a good Inrolment within the Statute, &c. *Stil.* 462.

If acknowledged only by one.

And after a Deed is inrolled, 'tis no matter whether the Inrolment was legal or not, or by what Means it was inrolled; and he is estopped to say, it was not acknowledged.

Estoppel after an Inrolment.

1 *Leon.* 184. 3 *Leon.* 84.

And *non refert* when the Deed is acknowledged, so that it be inrolled within the six Months. 2 *Inst.* 675.

Acknowledgment, when.

If these Courts, said to be at *Westminster*, be adjourned to another Place, the Inrolment may be in them there; for 'tis confined to those Courts where-ever holden.

If *Westminster* Courts be adjourned.

2 *Inst.* 674.

The six Months are to be six Lunar Months. 2 *Inst.* 674. *Co. Lit.* 135. *b. vide* 2 *Roll. Abr.* 521. *Pl.* 1.

Six Lunar Months.

And tho' it be said, Within six Months after the Date; yet if it be inrolled the same Day it bears Date, it is well; for if before, it is within the six Months, *Dal.* 42. *per Cur'*: And yet it was there said, That one lost 5 *l.* *per Annum*, because such Inrolment was held void. [See after, Taken exclusive.]

Inrolment same Day the Deed bears Date.

And *per* 2 *Inst.* 674. the safer Way is to inroll it after the Day of the Date: And *vide* 1 *Leon.* 184.

The safer Way.

After the Date of the same Writings, this shall be taken exclusive; for the Date, and Day of the Date, are all one. 2 *Inst.* 674. *Dal.* 41. *vide* 2 *Roll. Abr.* 520.

After the Date taken exclusive.

If no exprefs
Date.

But if the Deed hath no exprefs Date, it may be inrolled within six Months after the Delivery, for that is the Date. 2 *Inst.* 674.

Intendment
upon an
Award.

And Money by Parol awarded to be paid within six Months after the Date, must be intended within six Months after giving up the Award. 3 *Bulst.* 311, 312.

If delivered
after the
Date.

But where it hath a Date, but is delivered after, though it can take Effect only from the Delivery, yet it must be inrolled within six Months after the Date. 2 *Inst.* 674.

Inrolment
the last Day,
good.

And by *Clayton's Case*, 5 *Rep.* it seems that if the Deed be inrolled the last Day of the six Months, it is a good Inrolment; for that the Day of the Date of the Deed shall be taken exclusive.

Concerning the Proviso.

Not to ex-
tend to Bo-
roughs, &c.

Provided this Act extends not to any Lands, &c. lying within any City, Borough, &c. wherein the Mayors, &c. or other Officers, have used to inroll any Evidences, Deeds, or other Writings within their Precinct or Limits.

In *London* by
Word only,
and good.

And therefore a Bargain and Sale of Lands in *London*, &c. by Word only, is good; for at Common Law, a Bargain and Sale by Word only, raised an Use; and the 27 *H. 8.* transfers the Use into Possession. 2 *Inst.* 675. *Popb.* 48. *Dal.* 63. — But since 29 *Car. 2. cap. 3. 2.*

Cities exemp-
ted.

And the Lands in such Cities, &c. are exempted out of the Act, and no Provision made for Inrolments in those Cities, &c.

2 *Inst.*

2 *Inst.* 676. *Dyer* 229. *Pl.* 50. *Dal.* 63. *Yelv.* 124.

Note, This Statute doth not extend to Statute ex-
Leases for Years; for they have the same tends not to
Operation by Bargain and Sale without In- Leases for
rolment, as a Fee-simple hath with Inrol- Years.
ment. *Stiles Practical Regist.* last pub. 301.
1 *Lill. Regist.* 447.

That a future Interest of a Term will pass Nor future
by Bargain and Sale, without Inrolment or Interest of a
Attornment. *Ibid.* 302. & 2 *R.* 35. b. Term.

Again, by 5 *Eliz. cap.* 26. Bargains and Of Lands in
Sales of Lands, &c. in the County of *Lan-* the County of
caster, being within six Months inrolled in *Lancaster*, &c.
the *Chancery* at *Lancaster*, or before the Jud- by 5 *Eliz.* 26.
ges of Assize there, of Lands, &c. in *Cheshire*
in the *Exchequer* at *Chester*; or before the
Judges of Assize there, of Lands, &c. in the
Bishoprick of *Durham*, in the *Chancery* at
Durham, or before the Justice of Assize there;
shall be as effectual, as if inrolled in any
Courts at *Westminster*.

Provided, this Act extends not to any Cities, &c.
Lands lying within any City, &c. wherein exempted.
the Mayors, &c.

It is noted, That before the Twentieth Conveniency
Year of Queen *Elizabeth*, it was not usual of the In-
to endorse the Inrolment of Deeds upon the dorsement of
Back of them as now is done: But now the Inrol-
Credit is given to that Endorsement, with- ment.
out any further Proof, as being made by a
known Officer, and intrusted for that Pur-
pose. *Stil. Pract. Reg.* last pub. 302.

Upon Inrolment, the Estate passeth *ab initio*,

It is noted, That if after 27 H. 8. *cap.* 10. and before 27 H. 8. *cap.* 16. a Man had bargained and sold Lands, &c. the same had been immediately executed : But per 27 H. 8. *cap.* 16. (which obstructs the Operation 'till Inrolment) it shall not, except the Deed be inrolled within six Months, &c. But when the Deed is inrolled, it passeth *ab initio*, 2 *Inst.* 671, 674. viz. what the Bargainor had at the Time of the Bargain, &c.

Upon a Sale by one Joint Tenant, &c.

But if one Joint Tenant bargains and sells, and before Inrolment the other dies, and after the Deed is inrolled, the Moiety only which the Bargainor had at the Time of the Bargain, &c. shall pass. *Co. Lit.* 186. a.

No Dower where Bargainee dies.

Also, if the Bargainee dies before the Inrolment, his Wife shall not be endowed. *Owen* 70, 150. per *Cur*, vide *Cro. Car.* 217, 284, 569. *Godb.* 270. *Ow.* 69, 70. *Dal.* 41. *Dyer* 219. *Pl.* 6. *Hob.* 165. 2 *Bulst.* 34.

Bargainee dies, and the Deed is inrolled, his Heir shall be in by Descent.

Also, if the Bargainee dies, and after the Deed is inrolled, his Heir shall be in by Descent, have his Age, be in Ward, &c. for upon the Inrolment, the Estate settles *ab initio*, per Stat. 27 H. 8. *cap.* 10. only the Statute of Inrolment says it shall not vest, except the Deed be inrolled ; and when it is inrolled, the Estate vests, not by the Statute of *Inrolments*, but by the Statute of *Uses*, presently : *Dimmock's Case*, *Hob.* 136. *Cro. Jac.* 408. 1 *Roll. Abr.* 627. *Pl.* 10. *Owen* 149, 150. adjudged.

A Man

A Man leases for Years, rendring Rent, and after bargains and sells the Reversion; and the Bargainee gives Notice thereof to the Lessee, and after Rent is in Arrear, and paid to the Bargainor: And whether it ought not to be paid to the Bargainee, *Dubitatur*, *Godb. 156. vide Owen 69.* And *per Owen 150.* such Rent paid to the Bargainor, is good, and the Bargainee hath no Remedy, because it is a Thing executed.

Upon Bargain and Sale after a Lease for Years, rendring Rent, if Bargainor or Bargainee shall have the Rent Arrear.

Yet *vide Lat. 157. 1 Sid. 310. Cro. Car. 217.* by which Books the Bargainee shall have the Arrears: And *per Cro. Car. 217. per Lit. arguendo*, the Bargainee shall present to a Church which becomes void after the Bargain, and before the Inrolment.

If *A.* is bound in a Recognizance, and after bargains and sells his Land to *B.* and his Heirs; and a *Sci' fa'* upon this Recognizance is sued out, and thereupon is returned, That *A.* hath nothing, &c. *nec fuit inventus*, &c. And after the Deed is inrolled, and another *Sci' fa'* is awarded against *A.* and a like Return made thereupon, and *A.* makes Default, and thereupon an *Elegit* is awarded, these Lands cannot be extended; for the Freehold cannot by any Suit be charged, without making the Tenant thereof Party thereto; and upon the Matter *B.* was Tenant of the Freehold, and not *A.* for by the Bargain and Sale, the Use and Freehold pass *ab initio*, if the Deed be inrolled. 2 *And. 160.* adjudged *per totam Cur'.*

Bargain and Sale by Conu-
sor after the
Recogni-
zance, &c.

It

Upon Inrolment, the Bargainee was seised, &c.

B. purchases by Bargain and Sale of A. and before Inrolment bargains and sells, &c.

It is noted, That by the Report of the Case in *Owen* 69, 70. it does not appear that any *Scire facias* was awarded after the Inrolment, but rather the contrary, viz. That the Award of Execution was before Inrolment: And with this, the Case as cited 2 *Inst.* 674. seems to agree, where said, That it was adjudged *una Voce*; that A. was not seised of the Lands the Day of the Date of the *Sci' fac'*; for that when the Deed was inrolled, the Bargainee was in Judgment of Law seised of the Land from the Delivery of the Deed. *Vid. Gen. Abr.* 696. in *Marg.*

That if A. bargains and sells Land to B. and his Heirs, and before Inrolment, B. reciting this Bargain and Sale to be by Indenture inrolled, bargains and sells to C. and his Heirs, all the Estate which he had by the said Indenture inrolled, and after the first, and then the second Deed is inrolled, *Cro. Jac.* 52. And said by two Judges, The Lands are well conveyed to C. for when the first Indenture was inrolled, the Estate was in B. *ab initio*, to bargain, sell, &c. and that the Words in the 2d Deed are apt enough to pass the Land, and the Recital of the Inrolment immaterial. But other two Judges held *contra*; For that a Man can't pass what he hath not, and 'till the Deed was inrolled B. had nothing, and he pass'd only what he had by Indenture inrolled. But *Walmley* held, the Land passed not by reason of the Misrecital; but that otherways it would have passed: And it was adjudged for the Defendant; *vide Hob.* 136. *Cro. Jac.* 409. *Owen* 149. *Hetl.* 68.

Vide

Vide G. observ'd cited, and Sale by in respect the mean given ag guendo; Inrolment this was

Vide 1 *V.*

But the *Morris*, upon a the Barg though rolled: *vide* 2 *J.* That ment le inrolled should

That only D inrolled gain an Whe ought 1 *Leon.* of is he for it r 1 *Lev.*

Vide Gen. Abr. 697. in Marg. where 'tis observ'd from 2 *Inst. 675.* the same Case is cited, and said, it was adjudged, That the Sale by the Bargainee was good; but that in respect of the special Manner of penning the mean Bargain and Sale, Judgment was given against it, *Vent. 360.* Same Point *arguendo*; and said, That the Bargainee before Inrolment might suffer a Recovery, and that this was warranted by common Practice: *Vide 1 Vent. 361.*

It seems the Sale was good, &c.

But that yet, in the Case of *Isham and Morris, Cro. Car. 110. Hetl. 82.* it was ruled upon a Trial at Bar, That a Lease made by the Bargainee before Inrolment was void, though the Bargain and Sale was after inrolled: But yet 'tis made a *Quare*; and *vide 2 Jon. 196, 197. 1 Vent. 360, 361.*

2. If a Lease by Bargainee before Inrolment be void.

That where the Bargainee before Inrolment levied a Fine, and after the Deed was inrolled, it was adjudged the Conusee should have the Lands. *4 Leon. 4.*

Upon a Fine levied before Inrolment.

Pleading therein.

That though the Words of the Deed are only *Dedi & concessi*; yet if for Money, and inrolled, &c. it must be pleaded as a Bargain and Sale. *2 Leon. 122. Cro. Eliz. 166.*

How the Deed must be pleaded.

Where in pleading a Bargain and Sale, it ought to be shewed it was for Money, *1 Leon. 170. Moor 504.* That the Want thereof is help'd after Verdict, upon *Non concessit*; for it must be intended proved at the Trial. *1 Lev. 308.*

It ought to be shewed it was for Money.

Vid.

If an Averment may be of the Delivery.

It ought to appear in what Court it was inrolled.

It ought to be alledged, that the Inrolment was within six Months, &c.

Vid. 1 Leon. 183. 2 Leon. 121. adjudged upon Demurrer, That the Averment of a *Primo deliberat'* ought not to be taken against a Deed inrolled; for by the same Reason it may be averr'd, that it was not delivered: *Sed vide Sav.* 91. That a Stranger should not be estopped by the Inrolment, though perhaps the Parties might, &c.

In Debt for Rent upon a Lease for Years, the Plaintiff declared, That *A.* leased, &c. and after by Indenture, *infra sex Menses debito modo Irrotulat' juxta formam Statuti*, bargained, &c. to the Plaintiff, &c. *Mich.* 9 *Fac.* inter Worly & Purly *Cro. Fac.* 291. *Yelv.* 213. But it seems, that after a Verdict for the Plaintiff, Judgment was arrested; because it was not shewn in what Court it was inrolled, and said that ought to appear, that the Court may know whether it was duly inrolled, and the Party may know where to search for it.

In Debt for Rent, the Plaintiff declared upon a Lease made by a Stranger, who after bargained and sold the Reversion to the Plaintiff *per Indenturam debito modo Irrotulat' in Cur' Cancellariae, Trin'* 23 *Car.* inter King & Somerland, *All.* 19. After a Verdict for the Plaintiff, Judgment was arrested, because it was not alledged, that the Inrolment was within six Months, nor *secundum formam Statuti*, and *debito modo* would not help it, for it might be so at Common Law. *Vid.* *Cart.* 221. and *Stiles* 34.

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The Defendant, in Debt upon a Bond, pleaded *Dureſs*: The Plaintiff replied, He ought not to be received ſo to do; for that at ſuch a Day after the Date of the Obligation, the Obligation was inrolled in *Chancery*: And the Court held for the Plaintiff; for in ſuch Caſe he may not deny his Deed.

Defendant eſtopped to deny his Deed after Inrolment.

Note, It is ſaid, that although the Inrolment, or other Matter of Record, ſhall not be tried *per Pais*; yet the Time when the Inrolment was made, ſhall be tried *per Pais*. *Stil. Pract. Reg.* laſt pub. 302.

Trial per Pais.

That if the Deed be loſt, yet the Inrolment is good Evidence, if it can be proved to a Jury by Circumſtances that there was ſuch a Deed. *Ibid.* 303.

If Deed be loſt.

And farther, that the Inrolment of a Deed is ſufficient Proof of the Deed it ſelf upon a Trial. *Ibid.* [See after.]

Proof.

Note, That by Statute 29 *Car. 2. cap. 3.* the Day of the Month and Year of the Inrolment of Recognizances, ſhall be ſet down in the Margin of the Roll; and no Recognizance ſhall bind Lands in the Hands of Purchaſers *bonâ fide*, and for valuable Conſiderations, but from the Time of ſuch Inrolment.

Inrolment of Recognizances.

Note, It appears by 1 *Keb. 117. Pl. 23.* that the Inrolment of a Fine, or other Conveyance, not being a Bargain and Sale, though acknowledged by the Parties themſelves, was not regarded without Proof of the Deed. *Pract. Reg.* 304.

Inrolment not regarded without Proof of the Deed.

Alſo

Office for Inrolment of Fines and Recoveries.

Mr. Milles his Advertisment of this Office.

Annexed to the Rules of the Court of C. B.

Sir M. Hale's Treatise for Registring Deeds.

Also note, That by 23 *Eliz. cap. 3.* it was enacted, That there should be an Office for the Inrolment of Writs for Fines and Recoveries; which see before, *pag. 58.*

Note also, That there is published, An Advertisement to Conveyancers, and other Practisers of the Common Law; and also to (their Clients) the Purchasers, from the Clerk of the Office of the Inrolment of Writs for Fines and Recoveries; erected by the Statute 23 *Eliz. Reginae, cap. 3.*

This Advertisement you may find annexed to the latter End of, *The Rules and Orders of the Court of Common-Pleas:* By Mr. Milles, Clerk of the Treasury of the same Court. Printed for Mr. Walthoe of the *Middle-Temple, 1708.*

Since which Acts for Inrolments of Deeds, the learned Judge, Sir *Matthew Hale*, writ a Treatise, (since published in Print) shewing how useful, safe, reasonable and beneficial, the Inrolling and Registring of all Conveyances of Lands, may be to the Inhabitants of this Kingdom.

Concerning the Inrolments of Grants made to Lords Manors, *vide ante 13.*

And see 3 & 4 *Edw. 6. 4.* and 13 *Eliz.* concerning the Exemplification of Inrolments.

CONTENTS of the Acts for Registering
Deeds and Conveyances.

PURsuant to which Treatise of Sir *M. Hale*, For the *West-*
there have been two several Acts made *Riding in*
for the publick Registering of Deeds, Con- *Yorkshire.*
veyances, Wills, and other Incumbrances of
Honours, Manors, Lands, Tenements or
Hereditaments, in the *West-Riding* of the
County of *York*.

The first thereof, in the second Year of *Anno 2 Anna.*
Queen *Anne*.

The second, in the fifth Year of the said *Anno 5 Anna.*
Queen, For Inrolment of Bargains and Sales
within the said *West-Riding*, in the Register-
Office there lately provided, and for making
the said Register more effectual.

Also another Act in the sixth Year of the For the *East-*
said Queen, For the like Inrolments in the *Riding in*
East-Riding of the said County of *York*, and *Yorkshire.*
the Town and County of the Town of *Anno 6 Anna.*
Kingston upon Hull.

By which last Act, the Deficiencies of the Deficiencies
former, with relation to the *West-Riding*, are amended.
to be altered, amended and directed, &c.

The Particulars of which last Act, are to
the Effect following, *viz.*

After a Preamble concerning frequent, Preamble.
secret and fraudulent Conveyances and In-
cumbrances of Lands in the *East-Riding* of
York; For Remedy thereof, 'tis enacted,

I. That

How a Memorial registered may be void as to subsequent Mortgagees, &c.

1. That a Memorial of all Deeds and Conveyances, and of Wills, and Devises in Writing, of Lands and Tenements, &c. in the said *East-Riding*, may be registered; and after Registering, shall be adjudged void against subsequent Purchasers and Mortgagees; unless such Memorial thereof be registered (as by this Act directed) before the Registering of the Memorial of the Deed or Conveyance, under which such subsequent Purchaser or Mortgagee shall claim.

Publick Offices, where kept.

2. That a publick Office be established at *Beverley*, to be managed by a fit Person, or his Deputy.

[*Note*, That for the *West-Riding* is at *Wakefield*.] This Act also extends to *Kingston upon Hull*.

Register, how elected.

3. That a Register be elected by Ballotting, Scrutators of the Ballot appointed, and how the Ballotting shall be, and the Register to be by Majority of Electors.

Of a new Election.

4. That upon a Vacancy by Death, &c. a new Election to be appointed, and Notice thereof given to the Electors by the Chief Constables.

Oath.

5. Register to be sworn, and the Form of his Oath, and also of his Deputy, if he shall appoint any.

Officer acting betwixt Death of one, and Election of another.

6. How the Office is to be executed by a Person to be appointed by the Executors, Administrators and Sureties, between the Death of one Register, and the Election of another; and the Person so executing, to take the Oath, with the Penalty for his Neglect, or fraudulent Practice.

7. That Memorials be written in Vellum Memorials of Deeds to be written in Vellum, &c. or Parchment; and in case of Deeds and Conveyances, to be under Hand and Seal of one of the Grantors, and Witnesses to prove the Signing of such Memorial, and Execution of the Deed or Conveyance therein mentioned: And in case of Wills, Wills. the Memorial to be under the Hand and Seal of some or one of the Devisees, his Heirs, Executors or Administrators, Guardians or Trustees, to be attested by two Witnesses upon Oath; which respective Oaths the Register, or his Deputy, is impowred to administer.

8. That such a Memorial shall contain Contents of the Memorial. the Date, Day, Month and Year; the Parties, the Witnesses thereto, the Parcels, the Parishes, &c. where the Lands, &c. lie: And that also the Deeds, Wills or Probates, be produced at the Time of Registering the Memorial; and the Register is to indorse thereon a Certificate of the Memorial entered: Which is to be allowed for Evidence Certificate to be indorsed, &c. of the Registry in all Courts of Record: And the Pages of the Register-Books, and of every Memorial registred, are to be numbred; and an Alphabetical Kalendar of all Parishes, and *Extra-Parochial* Places, by the Register, and the Memorials brought, are to be duly filed.

9. When Deeds, &c. are executed in *London*, or not within 40 Miles of the *East-Riding*, they are to be registred upon Affidavit of one of the Witnesses to the Execution thereof, and of the Signing of the Memorial, and of a Witness to the Signing of When Deeds are executed in London, &c.

Q

the

A Review of all the Statutes,

the Memorial of a Will: And the Register to make a Certificate thereof, to be allowed as Evidence in all Courts of Record.

Where more Writings than one go to the perfecting a Conveyance.

10. *Proviso*, That where more Writings than one go to the Perfecting a Conveyance, &c. the Lands and Tenements to be only once named in the Memorial, &c. and the Dates of the rest, with the Names of the Parties and Witneses, and Places of their Abodes; with a Reference to the Deed or Writing, whereof the Memorial is so registred.

Memorials of Wills.

11. A *Proviso* for Memorials of Wills to be registred within six Months after Death, when the Devisor or Testatrix dies in *Great-Britain*; and within three Years, if Party dies beyond the Seas.

When a Devisee is disabled to exhibit a Memorial.

And where the Devisee, by Contest or Impediment, is disabled to exhibit a Memorial in Time, as above, if a Memorial of such Contest, &c. be entred within six Months after the Death of the Devisor in *Great-Britain*, and in three Years after such Death beyond Sea; then the Registry of such Memorial, in six Months after Attainment of such Will, Probate, or Removal of the Impediment, shall be sufficient.

Bargains and Sales how to be inrolled.

12. The Statute of 27 *Hen. 8. cap. 16.* for Inrolling of Bargains and Sales of Lands, &c. recited, to be of little Use in the said *East-Riding*, enacted, That such Bargains and Sales in the *East-Riding*, inrolled by the Register, shall be as effectual as if inrolled according to 27 *H. 8.* And one or more Justices

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ces of Peace there have Power to take the Acknowledgment of one of the Bargainors, and the Register to indorse a Certificate on the Deed of the Time of Inrolling, and sign the same, &c. And such Deeds and Copies of the Inrolments thereof, to be as good Evidence as those inrolled in any of the Courts at *Westminster*: And every such Inrolment adjudged to be the Entering of a Memorial of such Deed pursuant to this Act, and have the same Effect.

13. This relates to the Registering Memorials of all Judgments, Statutes or Recognizances affecting Lands, Tenements or Hereditaments in the *East-Riding*. Memorials of Judgments.

[Which see in *Tit. Judgments.*]

14. The Fees for Entering Memorials, &c. are 1 s. if a Memorial, &c. exceed not 200 Words; and if it exceeds, then after the Rate of 6 d. per Hundred for all the Words over and above the first two Hundred; and so of Bargains and Sales, and Certificates and Copies given out of the Office: And for every Search in the Office 1 s. and no more. The Fees for entering Memorials, &c.

15. Register to attend the Office every Day (except *Sundays* and *Holidays*) between Nine and Twelve in the Forenoon, and Two and Five in the Afternoon; and to make Searches, and give Certificates under his Hand, (if required by any Person) testified by two credible Witnesses. Register's Attendance at the Office.

16. Register to give Security of 2000 l. for the faithful Performance of his Duty. Register's Security.

His Penalty
for Neglect
or Fraud.

17. Penalty for his Neglect or fraudulent Practice, Forfeiture of Office, with treble Damages, and full Costs to the Persons injured, to be recovered in any of Her Majesty's Courts of Record at *Westminster*: And if the Register die or surrender, and if no Misbehaviour appear in three Years after, his Recognizance to be void.

Forger of
Entries, &c.
his Penalty.

18. Forger of any Entry, Acknowledgment, or of any Memorial, Certificate or Indorsement, to suffer, &c. as by 5 *Eliz.* against Forger of false Deeds and Writings: And the like Penalty for Perjury, before the Register or his Deputy, or before any Judge or Master in *Chancery*, as if the Oath had been made in any of the Courts of Record at *Westminster*.

Satisfaction
upon Mort-
gages, Judg-
ments, Sta-
tutes, &c.
how to be
entred.

19. If a Certificate shall be brought to the Register or Deputy, signed by the Mortgageors, and Mortgagees in Mortgages, Plaintiffs and Defendants in Judgments, Cognizors and Cognizees in Statutes and Recognizances, attested by two Witnesses, that all Monies due have been satisfied in Discharge thereof: Which Witnesses shall, upon Oath before the Register or his Deputy, prove such Monies paid, and Certificate signed: In such Case the Register, or his Deputy, shall make an Entry in the Margent, against the Inrolment thereof, that the same Mortgage, &c. was satisfied, and refer to the Certificate, which he shall file.

Lands bound
by registering
Judgments,
&c.

20. *Proviso*, That if any Judgment, Statute or Recognizance, be registred in thirty Days after the Acknowledgment or Signing, all the

the Lands the Defendant or Recognizor had at the Acknowledgment or Signing, shall be bound thereby.

21. *Proviso*, That this Act shall not extend to Copyholds, Leases at Rack Rents, or Leases not exceeding 21 Years, where the actual Possession goeth with the Lease.

Act not to extend to Copyholds, Leases, &c.

22. That in all Deeds of Bargain and Sale, to be inrolled in pursuance of this Act, whereby any Estate of Inheritance in Fee-simple is limited to the Bargainee and Heirs, the Words, *Grant, Bargain and Sell*, shall be adjudged an express Covenant to the Bargainee, his Heirs and Assigns, for the Bargainor himself, his Heirs, Executors, Administrators and Assigns, that the Bargainor was seised of an indefeasible Estate in Fee, free from Incumbrances, (Rents and Services due to the Lord of the Fee, excepted;) and for quiet Enjoyment against the Bargainor, his Heirs and Assigns, unless limited by express Words contained in such Deed: And that the Bargainee, his Heirs, Executors, Administrators and Assigns, may in an Action assign Breaches, as if such Covenants were expressly inserted.

Of the words [Grant, Bargain and Sell] to be an express Covenant, and of the Extent thereof.

23. That every Leaf of the Register-Books shall be signed by two Justices of the *Riding* appointed at the General Quarter-Sessions, and entred in the Sessions-Book; as also an Entry of the Number of Books, and how called or marked, and how many Pages each contains.

Register's Book to be signed by Justices.

Q 3

24. That

No Member
of Parlia-
ment to be
Register.

24. That no Member of Parliament shall be capable of being a Register, or have any Profit in respect thereof; nor shall any Register or Deputy be chosen a Member of Parliament.

This a pub-
lick Act.

25. This Act shall be taken and allowed as a Publick Act.

The Clauses
in this Act to
affect Heredi-
taments in
the West-
Riding.

26. That all Clauses, Matters and Things in this Act, not contain'd in 2 *Annæ*, cap. 4. Stat. 2. or in 5 *Annæ*, cap. 18. shall affect all the Hereditaments in the *West-Riding*, the Mortgage or Purchase whereof shall exceed 50 *l*. And all Persons in the Execution of the recited Acts, shall observe the Directions of this Act, as to all Hereditaments lying in the *West-Riding*.

ACT for Registering Deeds and Conveyances in Middlesex. (*Vide ante* 84.)

Anno 7 *Annæ*
Regin.

THERE was also an Act made in the Seventh Year of Queen *Anne*, for the publick Registering of Deeds, Conveyances and Wills, and other Incumbrances which shall affect Lands and Hereditaments in the County of *Middlesex*: The Particulars whereof are to the Effect following;

The Pream-
ble.

The Preamble is concerning secret and fraudulent Conveyances and Incumbrances of Lands, Tenements and Hereditaments; For Remedy whereof, 'tis enacted,

Memorials
may be regi-
stred, &c.

1. That Memorials of all Deeds and Conveyances, and of Wills, and Devises in Writing, may be registred, [as is before mentioned

mentioned in the former Act, Numb. 1. *mutatis mutandis.*]

2. Concerning a Publick Office to be established for that Purpose: And that the Chief Clerk of the Inrolments in *Chancery* for the County of *Middlesex*, the Chief Clerk to inroll Pleas in the *Queen's-Bench*, the Clerk of the Warrants in the Court of *Common-Pleas*, and the Queen's Remembrancer or his Deputy in the Court of *Exchequer*, shall be the Registers or Masters of the Office, and may appoint their Deputy or Deputies, for whom they shall be accountable; and whom they shall present to the Lord High Chancellor, Commissioners of the Great Seal, the Chief Justice of the *Queen's-Bench*, the Chief Justice of the *Common-Pleas*, and to the Chief Baron of the *Exchequer*, for the Time being, to be by them, or any three of them, approved of; who may also be displaced by them, or any three of them, by any Writing under their Hands and Seals: As also they, or any three of them, have Power from Time to Time to make Rules and Orders for the better Management and Government of the Office.

Who shall be Registers or Masters of the Office.

3. That every Register, or Master, shall be sworn by the aforesaid Great Officers, or any of them, (together with the Form of the Oath faithfully to execute the said Office.)

Registers to be sworn.

4. Penalty for Neglect, or fraudulent Practice of Register or Master, treble Damages with full Costs.

Penalty for Neglect.

Memorials in
Vellum or
Parchment.

5. Memorials to be written in Vellum or Parchment; and in case of Deeds, &c. to be under Hand and Seal, and attested, &c. (as in the former Act, *numb. 7.*) with an Indorsement of a Certificate, &c.

Contents of
the Memorial,
&c.

6. The Contents of the Memorial, Deeds, Wills, &c. to be produced, Certificate to be indorsed thereon, Pages of the Register's Books to be numbred, Kalendar of Parishes, &c. and Memorials to be duly filed, (as in the former Act, *numb. 8.*)

If more Writings than one.

7. *Proviso*, When more Writings than one go to the perfecting a Conveyance, &c. (as in the former Act, *numb. 10.*)

Memorials of
Wills, how to
be, and when.

8. *Proviso*, For Memorials of Wills to be registred, (as in the former Act, *numb. 11.*) and where the Devisee is disabled to exhibit a Memorial, if the Impediment be entred within two Years, if Devisor, &c. dies in *Great-Britain*, or within four Years if Parry dies beyond Sea, it shall be sufficient to register the Memorial within six Months after the Impediment removed, (as before, *nu. 11.*)
Proviso, That in case of Concealment, or Suppression of a Will, Purchaser not to be disturbed or defeated, unless the Will be actually registred within five Years after the Death of the Devisor or Testatrix.

Fees for Entries.

9. The Fees for entring Memorials, Certificates or Copies, and Searches to be, (as in the former Act, *numb. 14.*)

Attendance.

10. The Registers or Masters to give due Attendance, (as before, *numb. 15.*)

11. Regi-

11. Registers and Masters to give Recognition and Surety of 2000*l.* (as before) for faithful Performance of their Duty. Register's Surety.

12. Damages and Costs for Neglect or Fraud, to be recovered in any of Her Majesty's Courts of Record at *Westminster*, by Action, Bill, Plaint, &c. Neglect or Fraud.

13. Penalties and Forfeitures for Forging of Entries, &c. and for Perjury, to be as before mentioned, (*numb.* 18.) Forgery.

14. Satisfaction of Mortgages, (whereof Memorials shall be entred, and Certificate sign'd by the Mortgagee or Mortgagees, attested by two Witnesses upon Oath) to be entred in the Margent against the Memorial, and refer to the Certificate, which shall be filed. Satisfaction of Mortgagees, &c. how to be entred.

15. This Act not to extend to Copyholds, Leases at Rack Rent, or to any Lease not exceeding 21 Years, where the actual Possession goeth with the Lease: Or to any Chambers in *Serjeants-Inn*, the Inns of Court, or Inns of *Chancery*. Act not to extend to Copyholds, &c.

16. How Judgments, Statutes or Recognizances, shall bind Lands and Hereditaments in *Middlesex*; which see before *pag.* 84. Lands bound by Judgments, &c.

17. That this Act be taken as a Publick Act, &c. This a Publick Act.

18. That no Member of Parliament be a Register, or capable to execute such Office by himself or any other, or have any Profit in respect thereof: Nor shall any such Register or his Deputy, or others receiving Profit out of the said Office, be chosen a Member to serve in Parliament. No Member of Parliament to be a Register, &c.

Concerning Duties to be paid upon Indentures of Apprenticeship and Clerkship, and of new Stamping the same, &c. according to a late Act made 8 Annæ Regina.

Duties to be paid upon taking Apprentices, &c.

Note, **T**HAT by an Act made in the 8th Year of Queen Anne, 'tis enacted, That Six Pence for every 20 Shillings of every Sum of Fifty Pounds or under, and Twelve Pence for every Sum of above Fifty Pounds, to be paid for every Clerk or Apprentice put out within the Term of Five Years from the First of May 1710: And the said Duties and Rates are to be paid by the said Masters or Mistresses respectively.

The Sum to be inserted in the Indenture, &c.

That the full Sum with an Apprentice, &c. is to be inserted in the Indenture, or other Writing relating to the Service of such Clerk, Apprentice or Servant; and shall bear Date upon the Signing, Sealing, or other Execution of the same, on Forfeiture of double the Sum.

The Indentures to be sent to the Head Office, or some Collector.

The Indentures are to be brought or sent to the Head Office, or some Collector within the Weekly Bills, within two Months after Date, Execution or Signing, and the Duties to be paid upon the producing to the Receiver General or Collector; and the Indentures are to be new stamp'd by the Receiver General, or indorsed by the Collector.

That

That such Indentures as are indorsed, if the same be executed within 50 Miles of the Weekly Bills of Mortality, shall within three Months after the making be brought or sent to the Head Office to be stamp'd anew; and if executed at a greater Distance, shall be so brought or sent within six Months after the Date or Making.

When Indentures indorsed by Collectors, are to be sent to the Office.

That Indentures, in which the full Sum received is not charged, and Duties paid, &c. shall be void; and the Clerk, Apprentice or Servant, incapacitated of being free of any City, Town, Corporation or Company, or of following or exercising the intended Profession, Trade or Employment.

If the Sum received, &c. is not charged, the Indentures to be void.

Provided, That such as are put out at the publick Costs of any Parishes, or publick Charities, shall not be charged.

Parish Indentures excepted.

No Indenture to be admitted in Evidence, unless Oath be made that the Sums were really paid.

Oath to be made.

That where any Thing shall be given to any Master not being Money, the full Value of such Thing is to be answered for the Duties, under the like Pains, Penalties, Forfeitures and Incapacities, as afore provided for Payment of Rates upon Monies.

If any Thing besides Money be given, &c.

Also by a Clause in a late Act made 9 Ann. for making good Deficiencies, and supplying Publick Debts, 'tis enacted, That several Persons having taken Clerks or Apprentices, and received Money with them, and through Inadvertency, &c. omitted to pay the Rates payable in that Behalf, and to have

Provision for such as have offended thro' Inadvertency.

have the Indentures stamp'd within the Time limited, such Persons paying the respective Rates by the 29th of *Septemb. 1711.* the same shall be stamp'd, and good in Law; and the Clerks, &c. capable of following their respective Professions, as if the Rates omitted had been duly paid, and the Indentures stamp'd within the Time limited.

Forfeiture of Masters not paying within the Time limited.

That Masters or Mistresses hereafter omitting to pay the said Rates within the Times herein and by the former Act limited, shall forfeit 50 *l.* a Moiety to Her Majesty, and a Moiety to the Informer.

For the Inrolment and Pleading of Grants of Deodands, &c. in the Crown-Office.

Note, (as has been partly observ'd before *pag. 13.*) By Statute 4 & 5 *W. & M. cap. 22. Sect. 1.* That Grantees from the Crown, of Felons Goods, Deodands, and other Forfeitures, shall not be compelled to inroll their whole Charter of Grant in the *Crown-Office*, but only such Part thereof as may express the Grants of such Felons Goods, Deodands and Forfeitures; for which the Clerk shall receive 20 *s.* and no more: And after such Inrolment, it shall be pleaded to any Inquisition.

Heir, &c. must also inroll.

Also an Heir, Devisee or Purchaser, must inroll, or Proceſs will go out against them. *Ibid. Sect. 3.*

[See before, *pag. 83.* concerning Judgments how to be brought into Court, and doggetted there.

Also see before, *pag. 84.* 7 Ann. Part of an Act for publick Registry of Judgments in *Com. Middlesex.*]

Baron and Feme. (Vide Bail 170.)

IF a Baron makes a Feoffment of the Feme's Lands, which was formerly a Discontinuance, she may now avoid it by Entry, according to 32 Hen. 8. cap. 28.

[See much Doctrine concerning Baron and Feme, in 1 Lill. Reg. 134. and 1st Volume of D'Anvers's Abridg. Tit. Baron and Feme.

Vide antea Tit. Assaults, 103. and Tit. Bail, 167, 170.]

And note, The Statute 32 Hen. 8. cap. 28. as to Leases by Baron and Feme, &c. runs thus:

By Statute 32 H. 8. 28. Leases made by Tenant in Tail, or by him who is seised in the Right of his Wife or Church, (they being of full Age at the Time of such Lease made) shall be good and effectual in the Law against the Lessors, their Wives, Heirs and Successors.

The Statute shall not extend to any Lease to be made of Lands in the Hands of any Farmer by Force of any old Lease, unless such old Lease expired within a Year after the making of the new; nor to any Grant to be made of any Reversion of Manors, Lands, &c. nor to any Lease of such Manor, Lands, &c. which have not been let to Farm, or occupied by Farmers 20 Years before such Lease made: Nor to any Lease

To what Leases it shall not extend.

to

to be made without Impeachment of Waste, nor to any Lease to be made for above 21 Years, or three Lives, from the Day of the making thereof: And that upon every such Lease there be reserved so much Yearly Rent, as hath been usually paid for the Lands so let within 20 Years next before such Lease made: And the Reversioners of the Manors, Lands, &c. so let, (after the Death of such Lessor or his Heirs) may have such Remedy against such Lessee, his Executor and Assigns, as such Lessor might have had against such Lessee.

By Husband and Wife of the Wife's Lands.

Provided, That all Leases made by the Husband of Manors, Lands, &c. (being the Inheritance of the Wife) shall be made by Indenture in the Name of the Husband and Wife, and she to seal to the same, and the Rent shall be reserved to the Husband and Wife, and the Heirs of the Wife: And here the Husband shall not alien or discharge the Rent, or any Part thereof, longer than during the Coverture, unless it be by Fine levied by Husband and Wife.

Parson and Vicar's Leases restrain'd.

This Act shall not extend to give Liberty to take more Farms or Leases than might have been taken before this Act, (*vid. Stat. 25. H. 8. 13. Sheep*) nor to any Parson or Vicar to make any Lease, otherwise than they might have done before.

Husband cannot make a Discontinuance to the Wife, &c.

No Fine, Feoffment, or other Act done by the Husband only of the Inheritance of Freehold of the Wife, shall make any Discontinuance, or prejudice the Wife or any other,

other, who is to enjoy it after her Decease ;
the Fines levied by the Husband and Wife
only excepted. [See after.]

This Act shall not give Liberty to the
Wife or her Heirs, to avoid any Lease here-
after to be made of the Wife's Inheritance
by the Husband and Wife for 21 Years or
under, or three Lives, whereupon the ac-
customable Yearly Rent for 20 Years before
is reserved, according to the Tenor of this
Act.

Leases by
Husband and
Wife for 21
Years, or 3
Lives.

This Act shall not extend to make good
any Lease made by any Ecclesiastical Per-
son, which are made void by Authority of
Parliament, or by any such Person, or other
now attainted of Treason.

Ecclesiastical
Leases re-
strain'd.

Note, By Statute 11 H. 7. 20. if a Woman
that hath an Estate in Dower for Life, or in
Tail, jointly with her Husband, or only to
her self, or to her Use, in any Lands, &c. of
the Inheritance or Purchase of her Husband,
or given to the Husband and Wife by the
Husband's Ancestors, or any seised to the
Use of the Husband or his Ancestors, do
sole, or (with an after-taken Husband) dis-
continue or suffer a Recovery by Coven, it
shall be void, and he, to whom the Land
ought to belong after the Death of the said
Woman, may enter (as if the Woman were
dead) without Discontinuance or Reco-
very.

Provided, That the Woman may enter
after the Husband's Death ; but if the Wo-
man were sole, the Recovery or Disconti-
nuance barreth her for ever.

This

A Review of all the Statutes,

This Act extends not to any Recovery of Discontinuance with the Heir next inheritable to the Woman, or by his Consent of Record inrolled. [*See after Tit. Bishops.*]

Now for the Affinity of the Matter, next shall follow the Statutes concerning Leases of Benefices by Bishops, and other Ecclesiastical Persons, &c.

Of Benefices, Bishops, Ecclesiastical and Religious Persons, &c.

[*Vide ante Ability and Non-ability, p. 2.*
Et vide *Baron and Feme* next before.]

Collation to
Archbishop-
ricks.

BY Statute 1 E. 6. 2. the Writ of *Conge d'Elire* ousted, and none but the King (by his Letters Patents) shall collate to an Archbishoprick or Bishoprick.

An Archbishop, Bishop or Suffragan, collated by the King, shall pay all usual Fees.

Ecclesiastical
Process.

All Process Ecclesiastical shall be in the King's Name, but the *Teste* in the Name of the Person having Ecclesiastical Jurisdiction; and when they issue from the Commissary, Official, or other Substitute, he shall subscribe his Name after the *Teste*.

The Seal of
the King.

The Seal of Office belonging to any such Person, shall have the King's Arms engraven upon it, with Characters under them to notify the Diocese; and he shall not use any other Seal, in Pain of Imprisonment during the King's Pleasure.

Provided,

Provided, That no more or other Fees Fees.
be taken for such Seal than as before ; and
that the Archbishop of *Canterbury* may use
his own Seal and Name for Faculties and
Dispensations, according to the Statute of
25 H. 8. 21. and also that Archbishops and
Bishops may make and order their Substi-
tutes ; and may also issue Commissions of
Suffragans, Certificates to the Court of
Tenth, Collations, Presentations, Gifts,
Institutions, Inductions, Letters of Order
or Dimissories under their own Names and
Seals, as in Times past.

Certificates into a Court of Record shall The Seal of
be in the King's Name, under the Bishop's the Bishops.
Seal, engraven with the King's Arms, as
aforesaid, *Teste* the Bishop.

But note, That this Statute was repealed
by 1 M. 2. and that Act of M. is afterwards
repealed by 1 Jac. 25. Yet *Quere*, Whether
this Statute of 1 E. 6. 2. be now in Force.

Of Citation by Bishops, &c.

By Statute 23 H. 8. 9. None shall be cited
to appear out of the Diocese, or peculiar
Jurisdiction where he or she dwelleth, ex-
cept by some Ecclesiastical or other Person
within the Diocese, or other Jurisdiction
whereunto he is so cited, for some Offence
or Cause committed or omitted, contrary
to Right or Duty ; or upon an Appeal, or
other lawful Cause, or when the Judge dares
not nor will not cause him to be cited, nor

None to be
cited out of
the Diocese,
except, &c.

R

is

A Review of all the Statutes,

is any way Party to the Suit, or at the Instance of the Inferiour Judge to the Superior, where the Law Civil or Canon doth allow it: And all this, in Pain to forfeit double Damages to the Party grieved, and 10 *l.* to the King, to be divided betwixt him and the Prosecutor.

The Archbishop may cite for Heresy in any Diocese within his Province, upon Consent or Neglect of the Bishop or Judge there.

This Act shall not restrain the Jurisdiction of the Prerogative Court for Probate of Testaments.

The Ecclesiastical Judge shall take but 3 *d.* for a Citation, upon the Pains aforesaid.

Of Courts, and Ecclesiastical Jurisdictions.

Authority of
the King's
Court.

Artic. Cleri, cap. 6. 9 E. 2. Albeit a Case be debated, and have Judgment in the Spiritual Court, yet the King's Court may afterwards discuss the same Matter, as the Party shall think expedient for himself.

Avoidance of
Benefices.

Statute pro Clero, 25 E. 3. Stat. 3. cap.—
Conizance of Avoidance of Benefices belongs to the Ecclesiastical Judge, and not to the Temporal.

No High
Commission
Court to be
erected.

By Statute 17 *Car. 1. cap. 11.* a Recital of the Branch of the Stat. 1 *El. cap. 1.* whereby the High Commission Court was erected for visiting, reforming and correcting all Heresies, Schisms, &c. and a Repeal of the same: And enacted, That no new Court be erected with like Power, Jurisdiction or Authority; but

but all Letters Patents for that Purpose, and all Authorities thereby granted, to be void.

By Statute 13 *Car. 2. cap. 2.* Reciting the Act of 17 *Car. 1. cap. 27.* for disenabling all Persons in holy Orders to exercise any Temporal Jurisdiction or Authority; and that the same having made several Alterations prejudicial to the ancient Rights of Parliament, and contrary to the Laws of the Land, and by Experience is found inconvenient, doth repeal and annul the said recited Act to all Intents and Purposes whatsoever.

17 *Car. 1. c. 27.* repealed.

By Statute 13 *Car. 2. cap. 12.* An Explanation of a Clause contained in the Act of 17 *Car. 1. cap. 11.* touching the Repeal of a Branch of the Statute of 1 *El. cap. 2. viz.* it is declared, That neither the said Act, nor any Thing therein contained, doth take away any ordinary Power or Authority from the said Archbishops, Bishops, or Persons therein named; but that they may use all Ecclesiastical Jurisdiction as formerly in Causes belonging to the same.

Bishop's Ordinary Power not taken away by 17 *Car. 1. c. 11.*

Proviso, and enacted, That it shall not be lawful for any Archbishop, Bishop, Chancellor, or other Ecclesiastical Judge, Officer, or Person having or exercising Spiritual or Ecclesiastical Jurisdiction, to tender or administer unto any Person whatsoever the Oath *Ex Officio*, or any other Oath, whereby such Persons to whom the same is administered may be charged or compelled to confess, or accuse, or purge him or her self of

But may not tender or administer the Oath *Ex Officio*.

any criminal Matter or Thing, whereby he or she may be liable to Censure or Punishment.

Not to have a larger Jurisdiction than in 1639, &c.

Priviso, Not to give any other Jurisdiction to any Archbishop, &c. than they had by Law before the Year 1639. nor to abridge or diminish the King's Supremacy in Ecclesiastical Matters, nor to confirm the Canons made in the Year 1640. nor any Laws or Canons not formerly confirmed or enacted by Parliament, or established by the Laws as they stood in the Year 1639.

Of lawful Leases to be made by Bishops, and other Ecclesiastical Persons.

What Estates made by Bishops, to be void, &c.

By Statute 1 *Eliz.* not printed, All Estates made by any Archbishop or Bishop, of any Manors, Lands, &c. Parcel of the Possessions of their Bishoprick, or united or appertaining thereunto, to any Person or Persons, Body politick or corporate, other than to the Queen, her Heirs and Successors, and other than for the Term of 21 Years and three Lives, from the Time of such Estate made, and whereupon the accustomed yearly Rent or more shall be reserved and payable yearly during such Term for 21 Years, or three Lives, shall be void to all Intents and Purposes.

What Leases made by Masters, &c. of Colleges, &c. to be void.

By Statute 13 *Eliz.* 10. All Leases, Conveyances or Estates, made by any Master or Fellows of any College, Dean and Chapter, or any Cathedral or Collegiate Church, Master or Guardian of any Hospital, Parson, Vicar,

Vicar, or any other having any Spiritual or Ecclesiastical Living, or any Houses, Lands, Titles, or other Hereditaments, being Parcel of their College, Cathedral, Chapter, Hospital, Parsonage, Vicarage, or other Spiritual Promotion, or belonging thereunto, other than from Twenty one Years or three Lives, from the making thereof, and whereupon the accustomed Yearly Rent or more shall be reserved and payable Yearly during the Term, shall be utterly void to all Intents and Purposes.

This Act shall not make good any Lease, or other Grant against the private Statutes of any College or Collegiate Church.

Leases against College Statutes.

This Act shall not extend to any Lease hereafter to be made upon Surrender of a former Lease, or by reason of any Covenant or Condition contained in any former Lease, and still continuing; so as the Lease to be made contain not more Years than the Residue of the Years of such former Lease, nor any less Rent than is thereby reserved.

Leases to be made upon Surrender of former Leases.

By Statute 13 Eliz. 20. No Lease made of any Benefice or Ecclesiastical Promotion with Cure, or any Part thereof, (and not Impropriated) shall endure any longer than while the Lessor shall be ordinarily resident and serving the Cure of such Benefice, without Absence above 80 Days in any one Year; but that every such Lease [so soon as it, or any Part thereof, shall come into any Possession or Use above forbidden, or] immediately upon such Absence shall cease, and be

Leases made of Benefices, &c. with Cure, how long to endure.

void: And the Incumbent so offending, shall lose a Year's Profit of his Benefice, to be distributed by the Ordinary among the Poor of the Parish.

Parson's
Lease to his
Curate.

Provided, That every Parson allowed to have two Benefices, may demise one of them (upon which he is not most ordinarily resident) to his Curate only; but such Lease shall endure no longer than during such Curate's Residence, without Absence above 40 Days in any one Year.

Words in 14
El. repealed.

By Statute 14 *Eliz.* 11. In the Statute of 13 *Eliz.* 20. these Words [*so soon as it, or any Part thereof, shall come into any Possession or Use above forbidden, or*] repealed.

Of Bonds and
Contracts,
&c. for suf-
fering Per-
sons to enjoy
Benefices
with Cure.

All Bonds, Contracts, Promises and Covenants, hereafter to be made for suffering or permitting any Person to enjoy any Benefice or Ecclesiastical Promotion with Cure, or to take the Fruits thereof, (other than such Bonds and Covenants made for Assurance of any Lease hereunto made) shall be adjudged of such Validity (and no otherwise than) as Leases thereof made. The like Law is of Leases, Bonds, Promises or Covenants, made by Curates.

To what
Houses, &c.
Leases by
13 *Eliz.* c. 10.
shall not ex-
tend.

The Branch of the Statute of 13 *Eliz.* 10. made to avoid certain Leases made by certain Persons having Spiritual Livings, shall not extend to Houses situate in Corporations or Market-Towns, or the Suburbs thereof, nor unto the Grounds appertaining to such Houses, so as they be not the Dwelling-houses of such Persons, nor have above 10 Acres of Ground belonging to them.

Provided,

Provided, That no Lease shall be made by Force of this Act in Reversion, or without reserving the accustomed Yearly Rent at least, or without charging the Lessee with Reparations, or for longer Term than forty Years: Neither shall any such Houses be alienated without purchasing presently after other Lands in Fee-simple of as good Value, and as great Yearly Value as the Houses so alienated.

Leases not to be made in Reversion, &c.

By Statute 18 *Eliz.* 6. Upon Leases made by Colleges in the two Universities, *Winchester* and *Eaton*, the third Part of the Rent shall be reserved in Grain, to be delivered to them Yearly at Days prefixed, after the Rate of 6 s. 8 d. for a Quarter of Wheat, and 5 s. for a Quarter of Malt, or under those Prices: Or it shall be in the Election of the Lessee to pay them in Kind, at the best Rates found in those several Markets respectively the next Market-days before the said Day prefixed for the Payment or Delivery thereof; and all Leases otherwise made, and all Bonds and Assurances given to the contrary, shall be void. Which said Grain or Money shall be expended for the Relief of the Commons and Diet of the said Colleges respectively without Fraud, in Pain of Deprivation of the chief Rulers of such Colleges respectively, and of all others consenting thereunto.

A 3d Part of Rent to be reserved in Grain at the Election of the Lessee.

This Act shall not extend to any Lease to be made by the President and Scholars of *St. John's College in Oxford*, of the Manor of *Fisfield*, to the Heir Male of Sir *Tho. White Kt.*

Manor of *Fisfield*.

late Alderman of *London*, and Founder of the said College.

Where a
Lease in be-
ing is not to
be expired,
&c. within
3 Years.

By Statute 18 *Eliz.* 11. All Leases made by such Persons as are mentioned in the Statute of 13 *Eliz.* 10. where another Lease is in being, not to be expired, surrendered or ended within three Years next after the Making of such new Lease, shall be void: And all Bonds and Covenants for renewing of any such Lease contrary to this Act, or to the said Statute of 13 *Eliz.* 10. shall also be void. Howbeit, this Act shall not extend to any Lease or Leases heretofore made by any such Person or Persons.

Where the
Ordinary
may grant
Sequestration
against the
Incumbent's
Profits.

After Complaint to the Ordinary, and Sentence given upon any Offence committed by the Incumbent against the Statute of 13 *Eliz.* 20. whereby he ought to lose the Profits of his Benefice, the Ordinary within two Months after such Sentence given, and Request made by the Church-wardens or one of them, shall grant the Sequestration thereof to such Inhabitant or Inhabitants there, as to him shall seem convenient; and upon Default in the Ordinary, it shall be lawful to every Parishioner there to retain his Tythes, and for the Church-wardens to take the Profits of the Glebe, and other Rents and Duties of such Benefice to be employed to the Use of the Poor, until the Sequestration shall be committed by the Ordinary, and then the Church-wardens and Parishioners are to accompt to him or them, to whom such Sequestration shall be committed; and he or they shall employ the said Profits to such Uses as by the said Statute

of

of 13 Eliz. 20. are appointed, in Pain to forfeit the double Value of the Profits withholden, to be recovered in the Ecclesiastical Court by the Poor of the Parish.

By Statute 43 Eliz. 9. all Judgments hereafter to be had for the Intent to have or enjoy any Lease contrary to the Statutes of 13 Eliz. 20. 14 Eliz. 11. and 18 Eliz. 11. or any of them, shall be deemed void, in such sort as Bonds and Covenants are appointed to be void, which are made for that Purpose. What a Bishop may do with or without the Dean and Chapter, concerning his Possessions.

Judgments for Enjoyment of Benefices, to be void, &c.

10 Rep. from 58 to 61.

Simony.

By Statute 1 W. & M. Sess. 1. cap. 16. After the Death of a Person Simoniacally promoted to any Benefice or Ecclesiastical Living, the Offence or Contract of Simony shall neither by way of Title in Pleading, or in Evidence to a Jury, or otherwise, be alleged or pleaded to the Prejudice of any Patron innocent of Simony, or of his Clerk, upon Pretence of Lapse, or otherwise, unless the Person Simoniacally promoted, or his Patron, were convicted of such Offence at the Common Law, or in some Ecclesiastical Court in the Life-time of the Person Simoniack.

No Leases really and *bonâ fide* made, or to be made, by any Person Simoniacally promoted, for good and valuable Consideration, to any Person not being privy to, or having Notice of such Simony, shall be impeached or avoided by reason thereof.

Of

Of Dilapidations by Ecclesiastical Persons.

Remedy upon suffering Dilapidations, &c.

By Statute 13 *Eliz.* 10. If any Ecclesiastical Persons who are bound to repair the Buildings, whereof they are seised in Right of their Place or Function, suffer them to fall into Decay for Want of Repair, and make fraudulent Gifts of their Personal Estate, with Purpose to hinder their Successors from recovering Dilapidations against their Executors or Administrators; In such Case, the Successors shall have like Remedy in the Ecclesiastical Court against the Grantee of such Personal Estate, as he might have had against the Executor or Administrator of the Predecessor.

By Statute 14 *Eliz.* 11. all Monies recovered for Dilapidations, shall within two Years be employed upon the Buildings for which they were paid, in Pain to forfeit to the Queen, &c. double so much as shall not be so employed.

Of Mortmain to Spiritual Uses, &c.

Lands given to religious Houses.

By *Magna Charta* 36. 9 *H.* 3. If any shall give Lands to a religious House, the Grant shall be void, and the Land forfeit to the Lord of the Fee.

Lords may enter upon Lands given in Mortmain.

By the Statute of *Glocester, alias de Religiosis*, 7 *E.* 1. If Lands be any way alienated in *Mortmain*, to a Religious Person or other, the King or other Lord immediate may enter within a Year after such Alienation; and

and if such Lord neglect it, the next Lord to him may enter within half a Year after; and if all the mean Lords (being of full Age within the four Seas, and out of Prison) neglect to do it, after the Year the King may enter.

By *Westm. 2. 31 E. 1.* Ecclesiastical Persons being debarred by the former Statutes to obtain Lands in *Mortmain* by Alienation, endeavoured fraudulently to obtain them by Default in a Suit: And therefore in such Case it was ordained by this Statute, That it should be enquired by the Country, whether or no the Demandant had a just Title thereto; and if so, then he should recover Seisin; but if otherwise, the Lord of the Fee should enter, as aforesaid. And by this Statute, each mean Lord hath a full half Year given him after the Lord next before him, until it come to the King: And here also the Lords, as also the King, are allowed their Challenge.

Practices used by Ecclesiastical Persons to obtain Lands in Mortmain remedied.

After the Judgment given, the Lands shall remain clear in the King's Hand, until it be deraigned by the Demandant, or some other chief Lord; and the Sheriff shall be charged to answer for it in the *Exchequer*.

How the Lands shall remain after Judgment.

By *Ordinatio de perquirendis libertatibus*, 27 E. 1. to obtain Licence to make a Park, or to amortize Lands, the Writ *Ad quod damnum* shall issue out of the *Chancery* to enquire concerning the same.

Ad quod damnum to issue.

Here Inquisitions of Lands, that shall be found (by Extent) to be worth Yearly more than 28 s. shall be returned into the *Exche-*

Fines upon Licences to amortize Lands.

Exchequer, and there the Parties shall make Fine for the Amortizements, and for the Park, if the Inquisition pass for them: And afterwards the Chancellor (or his Deputy) shall have Order to do his Duty therein.

If the Yearly Value exceed not 20 s.

When the Yearly Value of the Lands exceed not 20 s. the Inquisition shall be returned to the Chancellor, and he (or his Deputy) shall rate and take the Fine, according to the Quantity of the Land.

The like shall be done by such as purchase Lands holden of the King in Chief.

Lands not to be aliened in Mortmain without Consent of the mean Lord, &c.

By the Statute of *Amortizing Lands*, 34 E. 1. Lands shall not be aliened in *Mortmain*, where there be mean Lords, without their Consent declared under their Seals: Neither shall any Thing pass where the Donor reserveth nothing to himself, or when the Inquisition is made and returned without Warrant, *viz.* without the Writ original returned with the Inquisition; and unless the Original make mention of every Thing according to the new Ordinance devised by the King.

Writs of *Ad quod damnum*.

The Statute of *Writs*, for making Inquisition of Lands to be put to *Mortmain*, *Incerti temporis*: Writs *ad quod damnum* for Amortizing Land, shall not be granted but upon Petition in full Parliament.

When Prelates and Clerks can shew the K.'s Letters of Licence.

By Statute *de Clero*, 3. 18 E. 3. If Prelates, Clerks beneficed, or other People of Religion, being impeached for purchasing Lands in *Mortmain*, shew the King's Charter of Licence, and Process thereupon made by an Inquest of *ad quod damnum*, or of the King's

Grace,

Grace, or by Fine, they shall be in Peace :
And albeit they cannot sufficiently shew that
they have entred by due Process after Li-
cence to them granted in general or special,
yet they shall be well received to make a
convenient Fine for the same.

By Statute 15 R. 2. 5. It is within the
Compass of the Statute of 7 E. 1. to con-
vert any Land into a Church-yard, albeit it
be done by the Consent or Connivance of
the Tertenant, and confirmed by the Pope's
Bull.

Of conver-
ting Land in-
to a Church-
yard, *contra*
Stat. Gloc.

If any be seised of any Lands, or other
Possessions, to the Use of any Spiritual Per-
son, with Purpose to amortize them, and
whereof such Spiritual Person takes the
Profits, they shall before the Feast of S. *Mi-*
chael next cause them to be amortized by
the Licence of the King and other Lords,
or dispose of them to some other Use ;
otherwise they shall be forfeit according to
the Form of the said Statute, as Lands pur-
chased by People of Religion : And no such
Purchase to the Use of such Spiritual Per-
sons, shall be hereafter made upon the like
Pain.

No Purchase
in Mortmain
to the Use of
a Spiritual
Person.

The same Law shall be of Lands, or other
Possessions purchased to the Use of Guilds
and Fraternities : Also Lands purchased by
Corporations, or to their Use, shall be with-
in the Compass of the said Statute *de Reli-*
gijs.

Nor of Lands,
&c. to the
Use of Fra-
ternities.

By

Trusts of
Lands to the
Uses of Churches,
&c. to
be void.

By Statute 23 H. 8. c. 10. If any Grant of Lands, or other Hereditaments, shall be made in Trust, to the Use of any Churches, Chapels, Church-wardens, Guilds, Fraternities, Commonalties, Companies or Brotherhoods, or have perpetual Obits, or a continual Service of a Priest for ever, or for 60 or 80 Years, or to such like Uses or Intents: All such Uses, Intents and Purposes shall be void; they being no Corporations, but erected either of Devotion, or else by common Consent of the People.

Unless for 20
Years.

Such Uses and Intents may be made and declared to continue 20 Years from the Time of such limiting of them, but no longer.

Collateral
Securities to
be void.

Collateral Assurances, made for the defending of this Statute, shall be void; and this shall be interpreted most beneficially for the Destruction of such Uses, as aforesaid.

Custom allowed.

This Act shall not prejudice Corporations, where there is a Custom to devise Lands in Mortmain.

Of Mortuaries demanded by Spiritual Persons.

What shall
be taken for
a Mortuary.

By Statute 21 H. 8. 6. No Spiritual Person, his Bailiff or Lessee, shall take or demand more for a Mortuary than as is hereafter expressed; nor shall convent any Person before any Ecclesiastical Judge for the Recovery of more for the same, than as is hereafter declared, in Pain to forfeit so much

much as he takes or demands more, and likewise 40 s. to the Party grieved, to be recovered by Action of Debt, wherein no Effoin, &c. shall be allowed.

None shall take or demand for a Mortuary any Thing at all, where (by the Custom) they have not been usually paid, nor upon the Death of a Woman Covert, a Child, a Person not keeping House, a way-faring Man, one not residing in the Place, where he happens to die, nor where the Goods of the dead Person (Debts deducted) amount not to the Value of 10 Marks; nor above the Sum of 3 s. 4 d. when they exceed not 30 l. nor above 6 s. 8 d. when they exceed 30 l. but not 40 l. nor above 10 s. when they amount to 48 l. or above. And if the Person die in a Place where he or she dwelleth not, their Mortuary shall be paid in the Place where they had their most Abode.

Where no Mortuary shall be demanded.

This Act shall not abridge Spiritual Persons to receive Legacies bequeathed unto them, or to the King's Altar.

Legacies.

No Mortuaries shall be paid in *Wales*, *Cambria* or *Berwick*, or in any of their Marches, save only in *Wales* and the Marches thereof, where they have been accustomed to be paid; and such as are there paid, shall be regulated according to the Order prescribed by this Act.

Wales and Berwick.

The Bishops of *Bangor*, *Landaff*, *St. Davids* and *St. Asaph*, and the Arch-deacon of *Cheshire*, shall take Mortuaries of the Priests within their Jurisdiction, as hath been accustomed, notwithstanding this Act.

Accustomed Mortuaries.

Less

Less Mortuaries already settled by Custom, shall not be increased by this Act; and there Persons exempted by this Act, shall not hereafter be chargeable.

Barretry, Champerty, Conspiracy, Maintenance, Forgery, Perjury and Subordination, relating to Law-Matters.

Barretor,
what.

A Barretor, in the Common Law, signifieth a common Wrangler, that setteth Men at Difference; and is himself never quiet, but at Brawl or Contention with one or other. *Vide Cow. Interp. verb. Barrator.*

Aliter.

By 8 Co. 36, &c. a common Barretor is a common Mover and Exciter, or Maintainer of Suits, Quarrels or Parties, either in Courts whether of Record or not, or *in Pais*, in Disturbance of the Peace, by taking and detaining Possessions of Houses, &c. Goods, &c. in Controversy, by Force, Subtilty or Fraud, and often in Suppression of Truth and Right; and by false Inventions, and sowing of Calumnies, Rumours and Reports, by which Dissention and Disquiet arises amongst Neighbours.

1 Ed. 3. c. 16. By Statute 1 Ed. 3. cap. 16. Conservators of the Peace who are not Barretors, shall be assigned in every County.

34 Ed. 3. c. 1. And by 34 Ed. 3. cap. 1. Justices of Peace shall have Power to restrain the Offenders, Riotors, and all other Barretors: And they have Power by Authority without any special Commission of Oyer and Terminer: Cro.

Fac.

Fac. 32. *Yelv.* 46. *Sed vide* 2 *Roll. Rep.* 151.
cont.

For Indictments of Barretry, *vide* 2 *Roll.* Indictments
Abr. 79. *Let. K.* 82. *Pl.* 5, 6. of Barretry.

Et vide West's Precedents, 75, 237, 257,
327, 338, 355. 2 *Cro.* 527.

Et vide Officium Clerici Pacis, Barretry.

If a Man prosecutes an infinite Number of Suits, which are his own proper Suits, against others, yet he shall not be a Barretor by this; for if they are false, the Defendants shall have Costs against him; and if such Person shall be a Barretor, then he that sues for Cause may be comprehended; but he that stirs up Suits among his Neighbours, is a Barretor. *Mich.* 11 *Fac. B.R. Some's Case,* *per Cur'*, *vide* 1 *Roll. Abr.* 355. *Let. A. Pl.* 1.

Not for prosecuting a great Number of his own proper Suits.

But if a Man designs not the Recovery of his own Right, but meerly to ruin and oppress his Neighbours, it is Barretry, *per* 3 *Mod. Rep.* 98. But it seems this must be in many Cases, and more than once or twice, so that he may be proved a common Barretor. 8 *Co.* 37. *b.*

Aliter, where he designs to ruin his Neighbours.

And it was formerly held by *Coke Ch. Just.* and the Lord Chancellor, *Trin'* 14 *Fac. in Camera Stellata,* *int' Oliver and Blanchflower*, That a common Solicitor, who solicites Suits, is a common Barretor, and may be indicted thereof, (but this seems to be meant of such, who upon their own Presumption, without Allowance of the Courts, take upon them to solicit Suits, &c.)

Common and unlawful Solicitor.

S

Vide

Against a
Barrister at
Law.

Vide 3 Mod. Rep. 97. where it's said, That if *A.* brings an Action against *B.* for 4000 *l.* (whereas in Truth *A.* owes *B.* 200 *l.* and *B.* owes *A.* nothing;) and thereupon *B.* is brought before a Judge to give Bail to the Action, and *C.* who is a Barrister at Law, is there present solliciting this Suit for *A.* this is Maintenance in *C.* but not Barretry, unless *C.* knew that *A.* had no Cause of Action: But it appearing upon Evidence that *C.* did entertain *A.* in his House, and brought several Actions in his Name, where nothing was due, *C.* was found guilty of Barretry.

Of Champerty.

Not to be
maintained
by any Offi-
cer.

By *Westm. 1. 25. 3 E. 1.* No Officer of the King shall maintain Plea of Land, or other Things, to have Part thereof, or other Profit by Covenant between them made, in Pain to be punished at the King's Will.

Not by other
great Offi-
cers.

By *Westm. 2. 49. 13 E. 1.* The Chancellor, Treasurer, Justices, or any of the King's Council, Clerks of *Chancery*, *Exchequer*, or of any Justice or other Officer, or any of the King's House, Clerk or Lay, shall not receive any Church or Advowson, Land or Tenement in Fee, by Gift, by Purchase, to Farm, by Champerty, or otherwise, so long as the same Thing is in Plea, nor shall take any Reward thereof, in Pain to be punished at the King's Will, both Buyer and Seller.

Fine and Im-
prisonment.

By Statute 33 *E. 1.* made at *Berwick*, the Attainted of Champerty shall suffer three Years Imprisonment, and be finable at the King's

King's Will: Where you have also the Form of a Writ for Remedy thereof to be issued out, by *Gilbert de Thornton*.

By *Artic. super Chart.* 11. 28 E. 1. None shall take upon him a Business in Suit, with an Intent to have Part of the Thing sued for, neither shall any upon any such Covenant give up his Right to another, in Pain that the Taker shall forfeit to the King so much of his Lands and Goods as do amount to the Value of the Part so purchased for such Maintenance; to be recovered by any that will sue for the King in the Court where the Plea hangeth.

Not to undertake a Suit for Part of the Thing sued for.

This shall not prohibit any to take Counsel at Law for the Fee, or of his Parents or Friends.

By Statute 33 E. 1. *Anno Domini* 1304. Champertors are such as move Pleas and Suits, or cause them to be moved, either by themselves or others, and prosecute them at their own Charge, to have Part of the Thing in Variance, or Part of the Gains.

Champertors, what.

By Statute 33 E. 1. *Anno Domini* 1305. None of our Court, of Pleaders, Attornies, Stewards, Bailiffs or any other, shall take any Plea or Suit to Champerty, or for Maintenance; in Pain that they, together with the Consenters thereunto, shall suffer three Years Imprisonment, and be fined at the King's Will.

Against Pleaders, Attornies, Stewards, &c.

[See also there the Form of a Writ for the same Purpose, and also against Conspirators.]

Of Conspiracy.

A Writ to be
awarded a-
gainst Con-
spirators, &c.

Conspirators,
what.

Places named
in the Indict-
ments, but
not to be
found.

By *Artic. super Charta*, 10. 28 E. 1. Against Conspirators, false Informers, and Imbracers of Inquests, the King hath provided a Writ in the *Chancery*; and the Justices of either Bench, and Justices of Assize, shall upon every Plaint thereof award Inquests thereupon without Writ.

By Statute 33 E. 1. Conspirators are such as bind themselves by Oath, or other Alliance, falsely and maliciously to indict, and falsely to move and maintain Pleas, and such as cause Children within Age to appeal Men of Felony, and retain Men to maintain their malicious Enterprizes: And this extendeth as well to the Takers as Givers; and also Stewards and Bailiffs, who by their Power maintain Debates that concern not their Lords, but other Parties.

By Statute 7 H. 5. Whereas divers have been indicted for Treasons and Felonies supposed to be committed in Places, there being none such to be found; every Justice having Power to hear and determine such Offences by the Oath of twelve Men (whereof each shall have Freehold within the County of the Yearly Value of 5 l. besides all Reprizes) shall before *Exigent* enquire of Office, whether there be (indeed) any such Places or no: And if there be no such Place or Places in the County where such Appeals or Indictments are made, they and the Process thereupon shall be void; and the Indictors shall be punished by Imprisonment,

prisonment, Fine and Ransom, at the Discretion of the said Justices; and if any *Exigent* be awarded before Inquisition, it shall be also void.

This Act to continue in Force until the next Parliament.

By Statute 9 *H. 5. 1.* the Statute of 7 *H. 5.* Continued. shall continue in force until the next Parliament after the King's Return from beyond Sea.

By Stat. 18 *H. 6. 12.* the Stat. of 9 *H. 5. 1.* 9 *H. 5. ma* made perpetual, because (*H. 5. dying be-* perpetual. yond Sea) some were of Opinion it was expired.

Of Maintenance, or maintaining Suits, &c.

By *Westm. 1. 28. 3 E. 1.* No Clerk of the King, or of any Justices, shall receive the Presentment of any Church for which there is Debate in the King's Court, without the King's special Licence, in Pain to lose the Church, and his Service: And that no Clerk of any Justice or Sheriff take part in any Suits, or use Fraud, whereby common Right may be delayed, in Pain to be punished as aforesaid, and more grievously, if the Trespass require it.

Against Clerks receiving Presentments.

By Statute 1 *E. 3. Parl. 2. 14.* None shall maintain Quarrels and Parties in the Country, to the Let and Disturbance of the Common Law.

Maintaining Quarrels, &c.

By Statute 20 *E. 3. 4.* None shall maintain any Quarrels save their own, in Pain

Simile

to have their Body, Lands and Goods, to be at the King's Pleasure.

Not by great Officers of the King.

By Statute 1 R. 2. 4. No great Officer of the King shall maintain Quarrels in the Country, in Pain of a Fine, to be imposed by the King and his Council, and no other Person, in Pain of Imprisonment, and to be fined at the King's Will; and if he be the King's Officer, or Household Servant, he shall also lose his Office.

Statutes against Maintenance and Champerty.

By Statute 7 R. 2. 15. the Statutes of 1 E. 3. Parl. 2. 14. 4 E. 3. 11. (which see in *Nisi prius*) 1 R. 2. 4. and 1 R. 2. 9. (which see in *Feoffments*) made against Maintenance and Champerty, shall be put in Execution.

To be duly put in Execution.

By Statute 32 H. 8. 9. all Statutes which concern Maintenance, Champerty and Embracery, shall be duly put in Execution.

Against buying of pretended Titles.

None shall buy any pretended Right or Title to any Land, unless the Seller hath taken the Profits thereof one whole Year next before such Bargain, in Pain that both the Buyer and Seller shall each of them forfeit the Value of the same Land, to be divided betwixt the King and the Prosecutor.

Forfeiture for Maintenance.

None shall unlawfully maintain any Suit or Action, retain any Person for Maintenance, imbrace Jurors, or suborn Witnesses to the Hindrance of Justice, or the Procurement of Perjury, in Pain to forfeit for every such Offence 10 l. to be divided betwixt the King and the Prosecutor.

How-

Howbeit, purchasing of a pretended Title by him that is already lawfully possessed of the Thing whereunto Title is made, is lawful. Exception.

Proclamations shall be made at the Assizes of the Statutes made against Maintenance, Champerty, Embracery, and unlawful Retainers. Proclamations.

The Offenders against this Act shall be prosecuted within one Year. Time of Prosecution.

Of Forgery, Perjury, and Subornation of Witnesses.

A Forger of false Deeds signifieth in the Common Law, either him that fraudulently maketh and publisheth false Writings to the Prejudice of any Man's Right, or else the Writ that lieth against him that committeth this Offence. *Fitz. N. B. fol. 96. b. c. Cowel's Interp. verb. Forger, &c.* Forger of false Deeds, what.

By the Statute of 5 Eliz. 14. If any alone, or with others, shall willingly, subtilly and falsly forge or make, or cause to be forged or made, any false Deed, Charter, or Writing sealed, Court-Roll, or Will in Writing, to the Intent that the Freehold or Inheritance of Lands, or the Right or Title thereof may be troubled, defeated or charged, or shall publish or shew forth in Evidence any forged Writing as true, knowing the same to be false and forged, and shall be thereof convicted upon an Action of Forger of false Deeds (to be founded upon this Statute) at the Suit of the Party grieved or otherwise, Stat. 5 El. 14. against Forging.

shall pay to the Party grieved double Costs and Damages, to be assessed in the Court where such Conviction shall be, shall be set upon the Pillory in some Market-Town, or other open Place, and there have both his Ears cut off, and also his Nostrils slit and seared with an hot Iron: He shall also forfeit to the Queen, her Heirs and Successors, the Issues of his Lands, and suffer perpetual Imprisonment during his Life: And the said Costs and Damages shall be first levied upon the Goods and Issues of the Lands of the Offender, notwithstanding the Queen's Title thereunto. *Vide Hob. 97. 3 Inst. 103, 169. 13 Co. 34, 35. Dyer 288, 302, 323.*

Forging of
Leases, &c.

For such Forging, &c. of a Lease for Years of Lands, (not Copyhold) or of an Annuity, Obligation, Bill, Acquittance, Release, or other Discharge of any personal Thing, the Offender shall pay double Costs to the Party grieved, to be assessed as before, be set upon the Pillory, lose one of his Ears, and suffer a Year's Imprisonment without Bail. *Vide Godb. 62. Pl. 75. 2 Brownl. 49.*

Remedy for
Costs.

The Party grieved may have his Remedy for his double Costs and Damages, by Original Writ out of Chancery, as in Case of Trespass, or by Bill in the King's-Bench, or in the Exchequer; in which Suit, no Essoin, &c. shall be allowed.

Not twice
punished.

Howbeit, he that is once punished for his Offence, shall not after be impeached for the same: And albeit the Plaintiff's Release, or Discontinuance of Suit, may discharge his own Remedy; yet the rest of the Punishment

nishment shall be nevertheless inflicted by Judgment, or Command of the Court.

The second Offence is Felony without 2d Offence
Clergy; whereof the Offender being con- Felony.
victed or attainted, he shall forfeit his Lands
and Goods as in other Cases of Felony, sa-
ving to all other Persons their Right, &c.
neither shall such Conviction or Attainder
extend to Loss of Dower, or Disinheriton
of Heir. *Vid. 3 Inst. 46.*

Justices of Oyer and Terminer, and Assize, in Offences de-
their Sessions, shall hear and determine these terminated.
Offences. *Vid. 9 Co. 118. Cro. Eliz. 87, 801.*

And by this Statute there is a Repeal of all Statutes re-
other Statutes made against Forgery. *Vide* pealed.
5 Co. fol. 50. Dyer 323.

As to the Forging a Customary Book, or Customary
Roll of a Manor, *vide Dyer 15. Eliz. 322. Book.*

Concerning the King's Pardon of For- Pardon.
gery, *vide 15 Eliz. Dyer 323. 5 Co. 50.*

Concerning the Forging of a Testament. Testament.
13 Eliz. Dyer 302.

Of inserting more in a Will than is di- Will.
rected. *12 Eliz. Dyer 288.*

Where one shall have an Action of For- Action upon
gery, tho' he hath but a Right to the Land. a bare
Pulton de Pace. 45. b. Sect. 18. Right.

Where no Title, no Action of Forgery, No Title, no
nor in respect of a Possibility. *Ibid. 46. Forgery.*
Sect. 19.

Concerning Forging of a Deed touching Jointenants.
Jointenants Land. *Ibid. Sect. 20.*

Where one sealeth a Deed by another's Sealing.
Commandment. *Ibid. Sect. 21.*

Where one forgeth, and another pub- Publishing.
lisheth. *Ibid. Sect. 22.*

Concern-

Antedating.Concerning Forgery by antedating of a Deed. *Ibid. Sect. 23.***Counterfeiting Letters, &c.**Concerning the getting other Mens Goods by counterfeit Tokens, or Letters, contrary to Statute 33 H. 8. 1. *Ibid. 46. Sect. 24.***Their Punishment.**Of calling such suspected Persons and Offenders before the Justices; the Punishment whereof may be by Imprisonment of Body, setting upon the Pillory, or otherwise by any corporal Pain, (except Pain of Death) as shall be unto him or them limited, adjudged or appointed by the Person or Persons before whom he shall be convicted: Saving to the Party grieved by such Deceit, such Remedy by way of Action, or otherwise, of and for the same Money, Goods, Chattels, Jewels, or other Things so obtained, as he might have had if this Act had never been made. *Ibid. 46, 47. Sect. 24, 25.***Remedy by Action.****Forging a Testimonial.**Concerning the Forging of a Testimonial contrary to the Statute 5 Eliz. cap. 7. the Punishment whereof is to be whip'd as a Vagabond. *Ibid. 47. Sect. 26.***Forging Exchequer Bills.**

By Statute 5 Ann. cap. 13. for making out Exchequer Bills upon the Rates and Duties granted upon Houses, &c. If any Person shall forge any such Bill or Indorsement thereon, or knowingly tender the same in Payment, with Intention to defraud, such Person convict shall suffer as a Felon, without Benefit of Clergy. The like Penalty is upon the late Act 7 Annæ Reg. for enlarging the Capital Stock of the Bank of England. Pa. 181.

Also

Also by Act 5 Ann. cap. 18. for inrolling Forging Entries of Deeds
Bargains and Sales in the *West-Riding of York*; in *West-Riding*
If any Person shall forge any Entry, &c. he of *York*,
shall be liable to the Penalties, cap. 14. against
Forgers of false Deeds, &c.

And if any Person shall forswear himself
in such Cases, he shall incur the same Penal-
ties, as if the Oath had been in any Court
at *Westminster*. The like upon the late Act
7 Ann. for registering Deeds, &c. of Lands in
the County of *Middlesex*. and *Middlesex*.

[See the Acts.]

Of Perjury.

By Statute 5 Eliz. 9. None shall stubborn Against Sub-
a Witness to give Testimony in any Court ornation of
of Record concerning any Lands, Goods, Witneses.
Debts or Damages, in Pain of 40 l. and if
the Offender (being convicted thereof)
hath not wherewithal to satisfy the said For-
feiture, he shall suffer six Months Imprison-
ment without Bail, stand upon the Pillory
one whole Hour in the same or next Market-
Town, where the Offence was committed,
and be for ever after disabled to give Testi-
mony in any Court of Record, until the Judg-
ment given against him be reversed by At-
taint, or otherwise.

He that commits wilful Perjury shall for- Penalty for
feit 20 l. suffer six Months Imprisonment wilful Per-
without Bail, and be ever after disabled to jury.
give Evidence, until the Judgment given
against him be reversed, as aforesaid: And
here also, if he hath not wherewithal to
discharge the Fine, (in the Country) the
Sheriff,

A Review of all the Statutes,

Sheriff, or (in a Corporation) the Head Officer, shall cause him to be set upon the Pillory in some Market-place, and to have both his Ears nailed.

Forfeitures
divided.

The Forfeitures abovesaid shall be divided betwixt the Queen, and the Party grieved.

Judges of the Courts, where such Offences shall happen to be committed; Justices of Assize, Gaol-delivery and of Peace; have Power to hear and determine the same Offences.

Proclama-
tion.

This Act shall be proclaimed at every Assize.

This Act shall not extend to any Court Ecclesiastical, but that they may there proceed, as in Times past.

This Act shall not restrain the Power of the *Star-Chamber*, nor of the Councils of *Wales*, or in the *North*, to punish heinous Perjuries: But that they may proceed as formerly, so as for the said Offences they inflict no less Punishment than by this Statute is ordained.

Battery.

WHAT is a Battery, and what not.
Ante 103.

Action for beating the Wife, and taking the Husband's Goods, how to be laid. *Ibid.*

Bills

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Bills

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Bills of Exchange, &c. *Vide Ante*
 pag. 6, 74.

AND observe further, That by Statute 9 & 10 W. 3. cap. 17. it's enacted, That after the 24th of *June* 1698. all Bills of Exchange drawn in or dated at and from any Place in this Kingdom, of the Sum of five Pounds Sterling or upwards, upon any Person in *London*, or any other Trading City, Town or Place, (in which Bills the Value shall be expressed to be received) drawn payable at a certain Time after the Date thereof, may after Acceptance in Writing, and the Expiration of three Days after the same shall be due, be protested by a Notary-Publick; or in Default of such Notary-Publick, by any other substantial Person of the Place before two Witnesses, Refusal or Neglect being first made of due Payment; which Protest shall be made under a Copy of the Bill in the Form prescribed by the Act, and shall be notified within fourteen Days after to the Party from whom the Bills were received, who (upon producing such Protest) is to repay the said Bills with Interest and Charges from the Protesting: For which Protest there shall not be paid above six Pence. And in Default of such Protest, or due Notice thereof, the Person so failing shall be liable to all Costs, Damages and Interest thereupon.

For negotiating Bills of Exchange in *England*.

Provided,

**Proviso,
Where the
Bill is lost.**

Provided, That if any such Inland Bills be lost or miscarry, within the Time limited for Payment of the same, the Drawer of the said Bills shall give other Bills of the same Tenor; Security being given to indemnify him in case the said Bills so lost or miscarried be found again.

**How to proceed upon the
Non-acceptance.**

Again, By the Statute 3 & 4 *Anna*, cap. 9. after the 1st of *May* 1705. in case the Party on whom an Inland Bill of Exchange shall be drawn, shall refuse to accept the same, by under-writing the same under his Hand, the Party to whom payable shall cause such Bill to be protested for Non-acceptance, as in case of Foreign Bills; for which Protest shall be paid 2 s. and no more.

What Acceptance shall bind.

Proviso, That no Acceptance of such Inland Bill shall charge any Person, unless under-written, or indorsed; and if not so under-written, or indorsed, no Drawer to pay Costs, Damages, or Interest thereon, unless Protest be made for Non-acceptance, and within fourteen Days after Protest the same be sent, or Notice thereof given to the Party from whom such Bill received, or left in Writing at his usual Place of Abode.

**Where the
Drawer shall
be compellable to pay
Interest, &c.**

If such Bill be accepted, and not paid within three Days after due, then no Drawer shall pay Costs, Damages, or Interest thereon, unless Protest be made and sent, or Notice given, as aforesaid: Nevertheless, the Drawer shall be liable to Payment of Costs, Damages and Interest, if any one Protest

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Proviso
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Protest be made for Non-acceptance, or Non-payment, and Notice be sent, given or left.

Proviso, That no such Protest shall be necessary, unless the Value be expressed in such Bill to be received, and unless the Bill be drawn for 20 l. or upwards, and Protest be made for Non-acceptance, by Persons appointed, *per 9 W. 3. cap. 17.*

Such Bill must be for Value received.

If any Person accept such Bill of Exchange in Satisfaction of any former Debt, the same shall be esteemed a full Payment, if he doth not his Endeavour to get the same accepted, and paid, and make his Protest, as aforesaid, for Non-acceptance, or Non-payment.

Acceptance of such a Bill to be in full Payment.

Proviso, That nothing herein shall discharge any Remedy any Person may have against the Drawer, Acceptor, or Indorser of such Bill.

Drawer, &c. not thereby discharged.

This Act to continue in Force for three Years from the first Day of *May*, and from thence to the End of the next Session of Parliament.

Continuance.

[*Vid. ante 74. as to Promissary Notes; and see after.*]

By Stat. 6 Ann. cap. 2. After 29 Sept. 1708. during the Continuance of the Bank of *England*, it shall not be lawful for any Body Politick or Corporate, (other than the said Company of the Bank) or for other Partners exceeding six, in *England*, to borrow or owe any Sum on Bill or Note payable at Demand, or at any Time less than 6 Months from borrowing thereof.

Advantage to the Bank of *England*.

The

Act for Promissary Notes made perpetual.

The Act 3 & 4 *Ann.* for giving like Remedy upon Promissary Notes, as is used upon Bills of Exchange, &c. is hereby continued, and made perpetual.

Act against Bankrupts continued.

The Acts 4 *Ann.* & 5 *Ann.* concerning Frauds committed by Bankrupts, and every Clause, Article and Sentence in the said Acts, are hereby continued from 25 April 1709. for five Years, and to the End of the Session of Parliament next following.

For the Difference of Bills of Exchange, *vide Mod. Caf.* 80.

Benefit of a Protest, &c.

Ibid. 81. That a Protest by the Stat. 9 *W.* 1. is for the Benefit of the Drawer.

Vide eundem 80. in Error brought upon a Bill of Exchange not protested.

Of Interest upon a Bill of Exchange.

Ibid. 138. *Per Cur'*, Interest upon a Bill of Exchange commences from Demand made; and therefore if there was no Demand made 'till Action brought, Defendant may plead Tender and Refusal, and *uncore Prist*, and so discharge himself of Interest: But if it be the Defendant's Fault that Demand could not be made, as if he were out of the Kingdom, there Want of Demand ought not to prejudice the Plaintiff.

Bill in Chancery.

(*Vide ante*, No Subpœna till a Bill filed, p. 43. *Vide postea*, Tit. Chancery.)

Bill.

Bill of Exception.

BY *Westm. 2. 31. 13 E. 1.* When the Justices will not allow a Bill of Exception upon Prayer, if the Party impleaded render the same unto them in Writing, and requires their Seals thereunto, they or one of them shall do it.

To be sealed by the Justices.

If the Exception sealed be not put into the Roll, upon Complaint thereof to the King, the Justice shall be sent for, and if he cannot deny the Seal, the Court shall proceed to Judgment, according to the Exception.

Bonds.

Bonds of Sheriffs to be assigned to the Plaintiff, *ante 41, 42, 105, 161, &c.*

Bonds given for Bail, discharged by Appearance, 98.

Also where Common Bail is an Appearance on Record, 77, 157.

Books, and Booksellers.

BY an Act for the Encouragement of Learning, by Vesting the Copies of printed Books in the Authors or Purchasers of such Copies, during the Times therein mentioned, it is enacted, That after 10th of April 1710. the Author of any Book already printed, who hath not transferred the Copy of such Book, &c. or the Bookseller, &c. who hath purchased the Copy of

Sole Right of Books now printed for 21 Years, &c.

T

any

Books not
then printed.

any Book, in order to print or reprint the same, shall have the sole Right of Printing such Book for the Term of 21 Years, to commence from the said 10th of *April* 1710. and no longer: And the Author of any Book not already printed, and his Assigns, shall have the sole Liberty of Printing and Reprinting such Book, for the Term of 14 Years, to commence from the Day of the first publishing the same, and no longer: And if any other Person after the 10th of *April* 1710. within the Times limited by this Act, shall print, reprint, &c. any such Book without the Consent of the Proprietor thereof in Writing, signed in the Presence of two Witnesses, or knowing it to be so printed, shall sell, publish, &c. without such Consent, then such Offender shall forfeit such Books to the Proprietors of the Copy, who shall damask and make waste Paper of them; and also one Penny for every Sheet found in his Custody, either printed or printing, published or exposed to Sale: One Moiety to the Queen, the other to the Person suing for the same; recoverable in any of Her Majesty's Courts of Record at *Westminster*, &c.

Title to be
entred with
Consent of
the Proprie-
tor.

Nothing in this Act shall extend to subject any Bookseller, Printer, &c. to the Forfeitures or Penalties for Printing or Reprinting of any Books, unless the Title to the Copy of such Book or Books hereafter published, shall before such Publication be entred in the Register-Book of the Company of *Stationers*, which shall be kept at the Hall of the said Company, and unless the

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Consent of the Proprietors be also entred, for which Entries Six Pence shall be paid, and no more: Which Register-Book may be resorted to, and inspected by any Bookseller, &c. without Fee or Reward; and the Clerk of the said Company shall give, when required, a Certificate of such Entry, for which he may take a Fee not exceeding 6 d.

If the Clerk shall refuse or neglect to make such Entries, or give such Certificate, if thereunto required by the Author, &c. in the Presence of two Witnesses, then such Person, Notice being first given of such Refusal in the *Gazette*, shall have the like Benefit, as if such Entry and Certificate had been duly made, and the Clerk shall forfeit to the Proprietors 20 l.

Penalty for refusing such Entry, or Certificate.

If any Bookseller or Printer shall, after the 25th of *March* 1710. set a Price upon, or sell any Books at such a Price as shall be conceived high and unreasonable, it shall be lawful for any Person to make Complaint thereof to the Archbishop of *Canterbury*, the Lord Chancellor, the Bishop of *London*, the three Chief Justices, the Vice-Chancellors of the Universities in *England*; the Lord President of the Sessions, the Lord Justice General, the Lord Chief Baron of the *Exchequer*, or the Rector of *Edinburgh* in *Scotland*, who shall have full Power to call before them such Bookseller, &c. and enquire of the Reason of the Dearness of the Price of such Book; and if upon Enquiry it be found that the Price is enhanced, or too high, then the said Archbishop, &c. shall have full Power

Remedy upon Complaint where Booksellers or Printers set too high Prices, &c.

A Review of all the Statutes,

to redress the same, and to limit and settle the Price of every such printed Book, according to their Judgments; and the Booksellers, &c. shall pay all Charges that the Persons so complaining shall be at by reason of such Complaint: All which shall be done by the Archbishop, &c. by Writing under their Hands and Seals, and thereof publick Notice shall be given in the *Gazette*: And any Bookseller, &c. that shall, after such Settlement made of the Price, sell any Books at higher Rates than what shall be so limited, shall forfeit 5 *l.* for every such Book so sold; one Moiety to the Queen, the other to the Person that shall sue for the same.

Copies to be delivered for the Uses of several Libraries.

Nine Copies of every Book upon the best Paper after the 10th of *April* 1710. printed or reprinted with Additions, shall by the Printer be delivered to the Warehouse-Keeper of the Company of *Stationers*, at the Hall of the said Company, before Publication, for the Use of the Royal Library, the Libraries of the Universities of *Oxford* and *Cambridge*, the Libraries of the four Universities of *Scotland*, the Library of *Sion* College in *London*, and the Library belonging to the Faculty of Advocates in *Edinburgh*: Which Warehouse-Keeper is, within ten Days after Demand, to deliver the same for the Use of the said Libraries. And if any Bookseller, &c. or the said Warehouse-Keeper, shall not observe the Directions of this Act therein, they shall forfeit, besides the Value of the printed Copies, 5 *l.* for every Copy not so delivered, with full Costs.

The

The Penalties in this Act in *Scotland* shall be recoverable before the Court of Session there.

Nothing in this Act shall extend to prohibit the Importation, Vending or Selling, of any Books in *Greek*, *Latin*, or any other Foreign Language, printed beyond the Seas. Books to be imported.

If any Action be brought against any Person, for doing any Thing in pursuance of this Act, Defendants may plead the General Issue, and give the special Matter in Evidence; and if a Verdict be given for the Defendant, &c. then the Defendant shall have full Costs, &c. General Issue.

Nothing in this Act shall extend to prejudice or confirm any Right that the said Universities, or any of them, or any Persons have, or claim to have, to the Printing or Reprinting any Book or Copy already printed, or hereafter to be printed. A Saving of Rights.

All Actions, Suits, &c. for any Offence that shall be committed against this Act, shall be commenced within three Months next after such Offence committed.

After the Expiration of the Term of 14 Years, the sole Right of Printing or Disposing of Copies shall return to the Authors thereof, if living, for another Term of 14 Years. Author's Benefit.

Breaches.

OF Breaches to be assigned in Covenant, 106.

Buildings and Houses destroyed by
Fire, &c.

No Action
where Fire
happens acci-
dentally.

BY Statute 6 *Ann. cap. 31.* 'tis enacted, That no Action shall be maintained against any in whose House or Chamber any Fire shall accidentally begin.

Provided, That nothing therein shall make void an Agreement between Landlord and Tenant.

Also by the said Act, That if any Servant, through Negligence, shall cause any House or Outhouse to be fired, such Servant being thereof convicted by Oath before two or more Justices of Peace, shall forfeit 100 *l.* unto the Church-wardens of the Parish; to be distributed amongst the Sufferers, as to the Church-wardens shall seem just: Upon Non-payment, such Servant shall be committed to some Work-house by Warrant of one such Justice for 18 Months, to be kept to hard Labour.

Continuance. There is also a *Proviso*, That so much of this Act as relates to the Indemnity of those in whose House any Fire shall begin, shall continue for three Years, and from thence to the End of the next Session of Parliament.

And by an Act made *Anno 10 Annæ*, For the Reviving and Continuing several Acts therein mentioned, for the Preventing Mischiefs which may happen by Fire, &c. enacted, That the Clause in Act 6 *Annæ*, [*viz.* No Action,

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Action, &c. shall be had against any Person in whose House or Chamber any Fire shall after the 1st of *May* accidentally begin, or any Recompence be made for Damage suffered thereby; and if any Action be brought for any Thing done in pursuance of this Act, the Defendant may plead the General Issue, and recover treble Costs;] which Clause being made temporary, and being expired, shall be revived and made perpetual. Also,

The former Act made perpetual.

The Act 11 & 12 *W. 3.* to enable Justices of Peace to build and repair Gaols, being expired, is hereby revived, and shall be in Force from the 1st of *May* 1712. for seven Years, and to the End of the next Session of Parliament. Also,

Building Gaols, &c.

The Act 6 & 7 *W. 3.* for exempting Apothecaries from serving the Offices of Constable, &c. which was continued by 1 *Annæ* for seven Years, &c. and will expire at the End of the next Session after the 11th of *February* 1712. shall remain in full Force for 11 Years, and to the End of the next Session of Parliament. Also,

Apothecaries no Constables.

The several Clauses and Provisions relating to the Returning of Jurors, in the Acts 4 & 5 *W. & M.* 7 & 8 *W. 3.* 1 *Annæ*, and 3 & 4 *Annæ*, shall be continued and be in Force for 11 Years, and to the End of the next Session of Parliament. Also,

Jurors.

The Act 7 & 8 *W. 3.* shall extend not only to any Sessions of the Peace, to be holden for the Ridings in the County of *York*; but also to any Sessions of Peace holden by Adjournment for any Part of the said Ridings.

Yorksfaire.

Exemption.

Any Person interested in such Estate as will qualify him to serve on Juries, of the clear Value of 150 *l. per Annum*, that shall serve as a Juror at any of the Sessions or Adjournments, shall not be thereby exempted from serving at the Assizes for the County of *York* for the Term of four Years, or any other Term.

[See after Jury and Jurors.]

Burglary, &c.

Robbing Persons and stealing Goods out of Houses, Shops, &c.

BY Statute 3 & 4 *W. & M. cap. 9.* Such as shall rob any Person, or feloniously take away Goods being in a Dwelling-house, the Owner, or other Person being there, and put in Fear; or shall rob any Dwelling-house in the Day-time, any Person being therein, or shall be Accessary to any of the said Offences; or to break any Dwelling-house, Shop or Warehouse thereunto belonging, or therewith used, in the Day-time, and feloniously take away Money or Goods to the Value of five Shillings, tho' no Person be therein; or shall counsel, hire or command any Person to commit any Burglary, being thereof attainted, or being indicted thereof, shall stand mute, or will not directly answer to the Indictment, or shall peremptorily challenge above 20 Jurors, shall not have the Benefit of their Clergy.

Excluded Benefit of Clergy, &c.

Persons indicted of any Offence, for which by Vertue of any former Law they are not excluded from Clergy, if convicted by Verdict or Confession, shall not be admitted

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mitted to the Benefit thereof if they stand mute, or will not answer directly to the Felony, or shall challenge peremptorily above Twenty.

Persons indicted for stealing any Goods in any County, and thereof convicted, or standing mute, or not answering directly to the Indictment, or challenging peremptorily above Twenty, shall be excluded the Benefit of their Clergy, if it appear upon Evidence that the said Goods were taken in any other County, in such Manner as if the said Persons had been convicted by a Jury there, they should have lost the Benefit of their Clergy.

By standing mute, &c.

Persons buying or receiving stolen Goods, knowing them to be stolen, shall be deemed Receivers of stolen Goods. Accessories to the Felony after the Fact.

If any Persons shall steal any Chattels, &c. which by Contract or Agreement they are to use, or shall be let to them in Lodgings, such Stealing shall be adjudged Larceny and Felony.

If a Woman be convicted of an Offence, for which a Man might have the Benefit of his Clergy, upon her Prayer to have the Benefit of this Statute, Judgment of Death shall not be given against her; but she shall suffer the same Punishment that a Man should suffer, viz. shall be burnt in the Hand, and farther be kept in Prison, not exceeding a Year.

Woman burnt in the Hand.

A Transcript certified by the Clerk of the Crown of the Peace, or of the Assizes, concerning the Tenor of the Indictment, and of the Persons having had the Benefit of his Clergy,

Certificate of Clergy allowed.

Clergy, or of this Act, to the Judges or Justices in any other County, shall be a sufficient Proof that such Person hath had the Benefit of his Clergy, or of this Act. Explained and continued for three Years by the Statute of 4 & 5 *W. & M. cap. 24.* and made perpetual by the Statute of 6 & 7 *W. 3. cap. 14.*

**Stealing
Goods, &c.**

By Statute 10 & 11 *W. 3. cap. 23.* All Persons who by Night or Day after the 20th of *May* 1699. shall in any Shop, Warehouse, Coach-house or Stable, privately and feloniously steal any Goods, Wares or Merchandizes of the Value of 5 *s.* or more, tho' such Shop, &c. be not broke open, and tho' the Owner or any other Person be, or be not, in such Shop, &c. or that shall assist in committing such Offence, being thereof convicted or standing mute, or challenging above 23 of the Jury, shall lose the Benefit of Clergy.

**Prosecutors
exempted
from Parish
Offices.**

After the said 20th of *May*, all Persons who shall take and prosecute any such Felons to Conviction, shall have a Certificate thereof *gratis* from the Judge or Justices, expressing the Parish or Place where such Felony was committed: And in case any Dispute happen about the Right to such Certificate, the Judge or Justices shall direct the Certificate into so many Shares as they shall think reasonable; which Certificate may be assigned over once, and no more: And the Proprietor or Assignee shall, by Vertue thereof, be discharged from all Parish or Ward-Offices in the Parish or Ward where

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where such Felony was committed ; which Certificate shall be inrolled by the Clerk of the Peace for 1 s. Fee.

Persons having made use of such Exemption, shall not then assign over such Certificate.

Persons slain by any such House-breakers, Horse-stealers, or other Felon aforesaid, by endeavouring to apprehend them, their Executors or Administrators shall have such Certificate as aforesaid *gratis*. **Executors may have it.**

Such as after the said 20th of *May*, shall commit any Burglary, House-breaking or Felony not within the Benefit of Clergy, in stealing Horses, Money, Wares or Goods, and being out of Prison, shall discover, or cause to be discovered, two or more Persons guilty of any such Burglary, &c. and thereof convicted, such Discoverer shall have the King's Pardon for such Burglaries, &c. committed before such Discovery made. **Pardon to Discoverers of Burglary.**

After the said 20th of *May*, all Persons convict of Theft or Larceny, within the Benefit of Clergy, shall, instead of being burnt in the Hand, be burnt with the usual Mark in the most visible Part of the left Cheek nearest the Nose in open Court, in the Presence of the Judge. This since altered to the Hand. **Punishment.**

No Clerk of Assize, Clerk of the Peace, or other Persons, shall take any Fee of Persons bound by any Justice of Peace to appear as Evidence against any Traytor or Felon for Discharge of their Recognizance, nor shall take above 2 s. for drawing any Bill of Indictment against any such Felon, **Fees of the Clerk of Assize, &c.**
under

A Review of all the Statutes,

under Penalty of 5 *l.* to the Party aggrieved, with full Costs of Suit.

Defective
Bill.

If any Clerk of Assize, Clerk of the Crown, Clerk of the Peace, Clerk of the Indictments, or other proper Officer, their Clerks or Deputies, draw any Bill defective, they shall draw new Bills *gratis*, or forfeit 5 *l.* with full Costs of Suit, to be recovered by those that will sue for the same by Action of Debt, &c. wherein no Effoin, &c. shall be allowed.

Acts conti-
nued.

By 12 *W.* 3. *cap.* 6. The Acts of 13 & 14 *Car.* 2. *cap.* 22. 18 *Car.* *cap.* 3. 29 & 30 *Car.* 2. *cap.* 2. 1 *Jac.* 2. *cap.* 14. 7 & 8 *W.* 3. *cap.* 17. For preventing Theft and Rapine upon the Northern Borders of *England*, continued for eleven Years, and to the End of the first Session of the then next Parliament.

Declared, that the said Acts shall be taken and reputed publick Acts.

Accessary,
how to be
proceeded
against.

By Statute 1 *Ann.* *cap.* 9. If the Principal be convict of Felony, stand mute, or challenge peremptorily above twenty Jurors, the Accessary may be proceeded against as if such principal Felon had been attainted, notwithstanding such Principal be admitted to his Clergy, pardoned, or otherwise delivered before Attainder.

If he stands
mute.

And such Accessary convicted, if he stands mute, or challenges as aforesaid, shall suffer as if the Principal had been attainted.

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Buyers and Receivers of stolen Goods knowingly, may be prosecuted for a Misdemeanor before the Principal be convicted, which shall exempt them from being punished as Accessary when the Principal is convicted. Buyers and Receiver of stolen Goods.

Witnesses for Prisoners upon Trials for Treason or Felony, shall be sworn as Witnesses for the Queen, are and be subject to like Punishment for Perjury. Witnesses.

Captains and Mariners belonging to Ships destroying the same to the Prejudice of the Owners or Merchants, shall suffer Death as Felons. Captains and Mariners to be tried;

The said Offence committed on the High Seas, shall be determined in such Places in the Realm as shall be limited by the Queen's Commission under the Great Seal, and according as 28 H. 8. cap. 15. for Trial of Pirates, directs. And where.

Any Person convicted of the last mentioned Offence, standing mute, or challenging above 20 Jurors, shall suffer Death without Benefit of Clergy. [See after Tit. Felony, Burglary continued.] Clergy not allowed.

By-Laws.

BY-Laws, Orders and Constitutions, may be made by Corporations for the well-governing of their Members: Which By-Laws must be made by Vertue of the King's Charter, or else by Prescription; and ought to be approved of by the Lord Chancellor, Lord Treasurer, or Chief Justices, as the Statute 19 H. 7. cap. 7. directs. By-Laws what, and how to be made.

There

By Commoners.

There may also be By-Laws made by Commoners, or Inhabitants of Vills, without any Custom. 5 Rep. 63, 67.

By-Laws must be subject to the Common Laws. *Hob.* 211.

By whom else.

Corporations cannot make By-Laws, or the King's Charter. 5 Rep. 63. *Cro. Car.* 497, &c. *Carter* 178, &c.

Cannot imprison, but may distrain.

A By-Law cannot imprison; but the Penalty may be levied by Debt or Distress. 5 Rep. 64. *Mo. Rep.* 411. *Pl.* 563.

Where no Prohibition to trade.

No Man can be prohibited by a By-Law to trade, farther than 5 *Eliz.* directs, 11 Rep. 536. Nor by the Common Law, to work in a lawful Trade, *ibid.*

Effect of 19 H. 7. c. 7.

And the 19 *Hen.* 7. cap. 17. doth not corroborate any By-Laws, but leaves them to be affirm'd or disaffirm'd, according to the Reasonableness or Unreasonableness of them; but saves the Makers of them from the Penalty of 40 *l.* if they are allow'd and affirm'd, 5 Rep. 63. *b.* 11 Rep. 54. *b.* otherwise they forfeit the Penalty, though it does not make a reasonable By-Law void. 2.

Where no compelling by Oath or Bond.

Also by 27 *Hen.* 8. cap. 5. No Apprentice or Journeyman shall by Oath or Bond be compelled not to keep any Shop, &c. without Licence of the Master; and for Corporations to be Judges in their own Cause, is unreasonable. 1 *D'Anvers's Abr.* 735.

A new Corporation's Power.

A new Corporation without Prescription, cannot exclude others from trading in their Town; but by a By-Law founded upon a Prescription, or Custom, may do it, *Hob.* 285. 2 *Brownl.* 178, 182. *Carter* 69. *Raym.* 294.

But if a Servant makes Cloaths for his Master, Mistress or Children, this is no exercising of a Trade. *11 Co. 54. a. 1 Roll. Rep. 4.* Servants working.

Neither can a Corporation make a By-Law to bind those that are not of their Body. *2 Vent. 33.*

A By-Law in *London* to enforce the Payment of a Livery Fine, is good. *1 D'Anvers's Abr. 736.* Livery Fine.

A Penalty forfeited by a By-Law, cannot be levied by Distress without a Prescription, Appointment or Limitation therein so to do: But a Penalty may be recovered by an Action of Debt, without Limitation. *5 Co. 62, 64. Dyer 321. Pl. 23.* Where no levying by Distress;

Also a By-Law to levy by Distress and Sale is void, for the Forfeiture cannot be levied by Sale of the Offender's Goods. *2 Vent. 182, 183.* Or Sale of Goods.

Neither may a By-Law be made upon Pain of Forfeiture of the Goods. *2 Vent. 183. 8 Co. 127. b. 1 Keb. 733.* Where no Forfeiture of Goods.

In fine, the Extent and Doctrine of By-Laws, may be thus sum'd up, (*viz.*)

I. **THAT** a By-Law is no other than a particular Ordinance of Discipline, proper to be us'd amongst a Multitude (or many), besides what is prescribed by the general Law, common to them and others, *Moor 583, &c* and that the Reason of admitting of By-Laws in the Law, arises upon this Necessity, That it is not possible for the general Law to provide fit Government for any particular Society; but that that which profits

Definition of By-Laws.

The Reason and Necessity of them.

profits one, may often prejudice others, because they differ much in particular Circumstances and Respects; as by Situation of the Place, by Plenty of Commonalties, by Nearness to the Sea, and the like: And therefore one Law meet for the Government of the Trades and Artificers in *New-Castle*, is not fit for *London*, *Bristol*, &c. *nec è contra*; and then it follows, that the same Reason which appoints general Laws to govern Kingdoms, ought to allow particular Laws for governing particular Societies, it being admitted that Discipline is requisite in both. see *Moor*, Rep. 583. and there he lays it down for a Rule, That by all such Means by which People may be incorporated, they may have Power to make By-Laws. And because that by Prescription, or by Charter, they may be incorporated, therefore by Prescription, or Charter, they may make By-Laws.

By what
Means and
Power.

In Leets and
Court-Baron.

And fol. 584. he says, That in Leets by Prescription, is a good Title to make By-Laws by Prescription, as 2 Hen. 4. fol. --- In a Court-Baron, where the Tenants assembled have Common, they may prescribe to make By-Laws for using of it, as 15 *Eliz.* *Dyer* fol. 321.

As for putting
Beasts
into the
Field.

Lord *Cromwell's* Case; That the Tenant of N. made a Law, That none should put their Beasts into the Field until the Farmer of the Rectory had rung the little Bell. And good.

A Penalty for
breaking the
L.'s Pound.

So 21 H. 7. fol. 40. & 14 H. 7. The Lord avow'd, that his Tenants might make By-Laws in his Court-Baron by Prescription. And they made one, That every one who

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broke the Pound should pay 3 l. to the Lord ; for which he distrain'd, and good.

So 49 *Aff. Pl. 8.* They of *London* would prescribe to make Corporations, *Sed non al-* Corporations may prescribe to make By-Laws.
locatur, because it is a Flower of the Crown; but there it was ruled, that Corporations may prescribe to make By-Laws.

The Book of 8 E. 3. *Fitz. Affize, Pl. 413.* So Fraternities.
allows the Commoners in a Marsh, or Merchants of a Fraternity, may make By-Laws, and the Consent of the major Part shall bind the others, altho' they do not assent: And there they do not prescribe, but the By-Law is taken as a Bar without Prescription.

That in ancient Charters of Incorporations, they have had by the most Part a special Clause to authorize them to make By-Laws; which proves that it has been taken in all Ages, That Charters which create Incorporations, may give Power to make By-Laws for the Government of them. A special Clause in ancient Charters.

And that where there is a Corporation by Prescription, which cannot prescribe in the making of By-Laws, there it seems the King by Charter may grant them Power to make By-Laws, for this Necessity, that the People assembled ought to have peculiar Discipline for their Government in the Trade, Science, or other Matter for which they are assembled. Where a Corporation cannot prescribe, the King may grant Power, &c.

By what is before mention'd it appears, Observation.
that it is incident to Corporations, Fraternities, Courts-Leet and Courts-Baron, to make By-Laws; but when they cannot prescribe, the King by Charter may grant them Power to make.

Stat. 19 H. 7. 2.
c. 7. how Or-
ders, &c. are
to be con-
firm'd.

AS to the Act of Parliament made 19 H. 7. cap. 7. it is provided, That no Masters, Wardens, and Fellowships of Crafts and Mysteries, or Rulers of Guilds or Fraternities, shall make and put in Use any Order or Ordinance, by them made in Diminution of the King's Prerogative, or against the common Profit of the People, not confirm'd by the Lord Chancellor, Lord Treasurer, Lords Chief Justices of the two Benches, or three of them; or by the two Judges of Assize of the County where the same Corporation is, under Pain of 40 l. And they shall make no Ordinance to restrain Suits in the King's Court, upon the like Pain of 40 l.

To make
void an Ordi-
nance of the
City of Lon-
don.

Upon an Ordinance made by the City of London, to prohibit Citizens to carry their Wares to Fairs and Markets out of the City to sell or barter, to the Intent that all Buyers and Merchants should resort to the said City to buy, &c. This Act gave them Liberty, and makes that Ordinance void, and none shall trouble any Citizen for so doing, in Pain of 40 l. to be divided betwixt the King and the Prosecutor: And it seems the Cause of this Statute was by reason of the great Damage which was likely to come by such an Ordinance. [See the Stat. & vid. Roll. Abr. 363. Pl. 2.]

To make
void a By-
Law, &c.

So a By-Law or Ordinance made by the Merchant-Adventurers, That none should sell or buy at the four Marts within the Dominions of the Duke of Burgundy, before Com-

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Composition made by Fine with the said Merchant-Adventurers, contrary to the Liberty of every *Englishman*, and to the Liberty of the said Mart, was made void by 12 H. 7. cap. 6. *vid.* 1 Roll. Abr. 363. Pl. 3.

As to the Charter of a Corporation, it is usual to put therein a Clause or Power to make Laws and Ordinances after this Manner, *viz.*

An usual Clause, &c. to make By-Laws.

“ And we further grant to them, That
“ the said Mayor and Commonalty may
“ lawfully, as Occasion shall be, and Need
“ shall require, assemble themselves together, and make such wholesom and good
“ Laws and Ordinances, for the better Government, Oversight, and Correction of
“ the same City, &c. and the People thereof; and to add, alter, diminish or reform
“ them, as to them shall seem good, and be
“ thought meet; so as they be not repugnant to the Laws of the Nation, nor
“ against the publick and common Good of the People, within or without the same
“ City.

Upon which Clause it hath been observed,

1st. That this Clause of giving Power to make By-Laws, is not altogether necessary to be inserted in the Charter; for by the very Act of Incorporating, this Power is given.

Observations upon the said Clause.

V 2

2^{dly}. That

What By-Laws, &c. are void by the Common Law.

2dly. That the Clause of Addition, That they may not make Ordinances repugnant to the Laws, &c. is to little Purpose, for the Law doth understand that; and it is included, And such By-Laws made by a Corporation are void by the very Common Law.

Observations upon the Stat. 19 H. 7. c. 7.

And as to the Provision made by the Statute 19 Hen. 7. cap. 7. aforesaid, the following Observations have also been made thereupon :

What By-Laws may be good, &c.

1st. That an Order or By-Law, made by a Corporation, not against the Prerogative of the Crown, or Profit of the People, is good without such Confirmation, as is in the Statute mentioned : And it is said, 1 Roll. Abr. 363. Pl. 4. That if an Ordinance be made by a Corporation, which hath Power to make it by Custom or Charter, if the Ordinances be reasonable and lawful, it may be put in Execution without any Allowance by the Chancellor, Treasurer, or others, &c. according to the Statute of 19 Hen. 7. cap. 7. 5 Co. Chamb. Lond. 63. b. But it seems that they forfeit the Penalty of the Statute, and it does not make the Ordinance void.

Of By-Laws to restrain Trade, &c.

2dly. That all By-Laws by them made against the Liberty and Freedom of the People, as to forbid or restrain Trade, impose Taxes or Burdens on the People, where the Law doth not impose them; to bind a Man's Inheritance, to restrain Men from suing in what Court they please, or to inhan-

the

the Prices of the Commodities, to the Hurt of the publick and private Advantage of the Place, are void: Nor can they annex to a good Ordinance a Penalty of Imprisonment, or Forfeiture of Goods bought or sold.

3dly. But that a Corporation may make such By-Laws and Orders as any Town, Parish, or Neighbourhood of Men, by the very Common Law may make, by a general Consent for the better Government of themselves, and common Good of the Place: And if it be for the publick Good, not only of the Place, but of the Country; as for the Repair of their Churches, Bridges, Highways, or the like, and there the greater Part may bind the lesser Part of them: And in this Case upon Disobedience, it is said to be good to appoint the Penalty to be given to the Corporation, and to be levied by Distress and Sale of Goods, and an apt Officer to do it; as the Church-wardens for the Church-Money, and Surveyors for Money for the Highway, or how they will. But it seems they cannot annex Imprisonment, nor a Forfeiture of Goods if it be for Goods bought or sold, for this is against Law. *Vide* 8 Co. 173. *Dyer* 179. also see before 2 Vent. 182, 183.

By-Laws, &c.
by general
Consent, &c.

Penalties by
Distress and
Sale, &c.

And upon such an Order made by general Consent, the Officer may do it, and justify it accordingly: But they cannot by this charge any Strangers that dwell without the Town.

For which
the Officer
may justify.

By-Laws upon a Custom, &c. good.

4thly. Also, that by Custom and Prescription they may perhaps go further, and do more, where Time out of Mind they have used so to do : As in *London*, and some other Corporations, they may by Custom or Prescription justify the doing of some Things against common Right ; so a Custom, that a Foreigner within the City shall not sell Things by Retail, is good. So also, if it be that he shall not sell so under Pain of *5 l.* But this is not good by Way of Charter, and therefore Cities that are incorporate within the Time of Memory, cannot have such Privileges without Parliament, *8 Co. 125. Dyer 179.* But an Ordinance made amongst themselves in Pursuit of such a Custom, may be good and binding ; but otherwise an Ordinance made to such a Purpose will be utterly void.

How reasonable Orders, &c. for Government, &c. may be made.

5thly. Also a Corporation may make any reasonable Orders and By-Laws for the better Government thereof, in the ordering of the Common-Council Officers and Members, and for the better ordering of the Trades and Mysteries, and other Matters amongst them, either by Custom, Consent, or voluntary Submission of the Whole, or by their Council, according to their Charter of Constitution.

By-Laws made in pursuance, &c. of the Laws of the Nation.

6thly. They may also make any Orders in Pursuance, and for the better Execution of the Laws and Statutes of the Nation, and to prevent Deceit : As for the better Ordering and Government of Trade, and the like, and all these will be good without any

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10 Co. 30

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Confirmation of Lords or Judges, 5 Co. 63.
Hob. Rep. 211. 11 Co. 53. 11 H. 7. 14. 44 Ed. 3. 19.
10 Co. 30.

But a Corporation cannot make a By-Law to restrain any Person to sue to the King, or his Courts, for Redress in their Cause, &c. per 19 H. 7. cap. 7. upon Pain of 40 l. as is before observ'd.

No By-Law to restrain Suitors to the King, &c.

[For Examples of many Cases, &c. touching By-Laws, see the first Vol. of D'Anvers's Gen. Abridgment, Tit. eodem.]

C.

Certiorari, &c.*Certiorari, Corpus cum Causa, Habeas Corpus, & Superfedeas.*

Vid. ante Tit. Bail, p. 158.

Certiorari
what, and
when.

THE King's-Bench usually sends *Certiorari's* to inferiour Courts of Record, commanding them to certify a Plaint which is before them, with all Things relating to the same: Which when return'd, then upon a Rule given, Bail must be put in before a Judge, or else a Writ of *Procedendo* will be granted.

There is also a Writ of *Certiorari*, which is sued out of the Crown-Office to certify Indictments, &c.

If to remove
a Prisoner.

By Statute 2 H. 5. Stat. 1, 2: If a *Corpus cum Causa*, or *Certiorari*, be granted out of the Chancery, to remove one that is in Prison upon an Execution at another Man's Suit, he shall be remanded.

Hab' Corp' how
to be deliv-
red.

By Statute 13 Eliz. 5. No Writ of *Habeas Corpus*, or other Writ sued forth to remove an Action, shall be allowed, unless it be delivered unto the Judge, or Officer of the Court,

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Court, before the Jury appear, and one of them be sworn.

By the Statute 21 *Jac.* 1. 18. Process of the Peace and Good Behaviour shall not issue out of the *Chancery* or *King's-Bench*, but upon Motion in open Court, and good Cause shewed upon Oath, which shall also be indorsed upon the Writ. Howbeit, if that Cause shall be afterwards disproved, the Judge or Judges of the said Courts (respectively) shall commit the Offender to Prison, until he pay the Party grieved all his Costs and Damages.

Process of Peace and Good Behaviour, how grantable.

All Writs of *Supersedeas* shall be void, unless such Process be likewise granted upon Motion, as aforesaid, and upon such sufficient Sureties as shall appear to the Court upon Oath to be Subsidy-Men, assessed at 5 *l.* Land, or 10 *l.* Goods, and also, unless the Prosecution against the Party for the Peace or Good Behaviour be *bona fide*: And here, false Sureties procured for the gaining of such Writs, shall be punished by the Judges.

Supersedeas, how grantable.

Certiorari shall not be allowed, unless the Indicted will become bound with sufficient Sureties (such as the Justices of Peace in Sessions shall like of) to pay to the Prosecutor within one Month after Conviction, such Costs and Damages as the said Justices shall assess.

Sureties upon a *Certiorari* to pay Costs.

By Statute 21 *Jac.* 1. 23. No Writ to remove a Suit commenced in an inferiour Court shall be obeyed, unless delivered to the

Writs for Removal, how and when to be delivered.

A Review of all the Statutes,

the Stewards, &c. of the same Court before Issue or Demurrer joined, so as such Issue or Demurrer be not joined within six Weeks after the Arrest or Appearance of the Defendant.

Suit remanded.

An Action or Suit once remanded, shall never afterwards be again removed.

If the Demand exceed not 5 l.

When the Thing in Demand exceedeth not 5 l. the Suit shall not be removed by any Writ, save only by Writs of Error or Attaint.

To what Courts and Actions Act extends.

This Act shall only extend to Courts of Record, where an Utter-Barrister of three Years standing is Judge, Recorder, Steward, &c. or Assistant to such Officer there, and not of Council in any Action there depending.

Neither shall this Act extend to any Action which cannot be tried in any inferior Courts.

Security to pay Prosecutor full Costs.

Note, That upon 4 & 5 W. & M. For destroying of Game, 'tis provided, That the Conviction be in three Months after the Offence: And if a *Certiorari* be allowed to remove the Proceedings, the Party, before the Allowance, shall be bound to the Prosecutors in the Sum of 50 l. with sufficient Security, on Condition to pay the Prosecutors (within 14 Days after such Conviction or *Procedendo* granted) their full Costs, to be ascertained upon their Oaths; and in Default thereof, the Justices or others may proceed to execute such Conviction.

By

By Statute 5 & 6 W. & M. c. 11. In Term time no *Certiorari* at the Prosecution of any Party indicted, shall be granted out of the Court of *King's-Bench*, to remove any Indictment before Trial had, and from before the Justices of the General or Quarter-Sessions of the Peace, unless such *Certiorari* shall be granted upon Motion of Council, and Rule of Court, in open Court; and that the Parties indicted prosecuting such *Certiorari*, shall find two Manucaptors before one or two Justices of the County in 20 l. to plead to the said Indictment in the *Kings-Bench*, and at their own Charges to procure the Issue that shall be joined upon the said Indictment, to be tried at the next Assizes held for the County where the said Indictment was found, after such *Certiorari* shall be returnable, if not in *London, Westminster* or *Middlesex*; and if in the said Cities or County, then to cause it to be tried the next Term after such *Certiorari* shall be granted, or at the Sitting after the said Term, if the *King's-Bench* shall not appoint any other Time; and if any other Time, then Notice to be given to the Prosecutor, and the said Recognizance and *Certiorari* to be certified into the *King's-Bench*, and there filed, and the Name of the Prosecutor to be indorsed: And if the Party prosecuting such *Certiorari*, being the Defendant, shall not before Allowance thereof procure such Manucaptors to be bound in a Recognizance, the Justices of Peace may try the said Indictment at the said Sessions, notwithstanding such *Certiorari* so delivered.

Of a *Certiorari* to be granted to remove an Indictment before Trial.

And

Costs upon
Defendant's
Conviction.

And if the Defendant prosecuting such *Certiorari* be convicted, then the *King's-Bench* shall give reasonable Costs to the Prosecutor, to be taxed according to the Course of the said Court; and within 10 Days after Demand upon Oath, and Refusal thereof, he shall have an Attachment against the said Defendant by the Court for his Contempt; and the Recognizance not to be discharged till the Costs so taxed shall be paid.

Certiorari
granted in
Vacation-
time.

Nevertheless in the Vacation, Writs of *Certiorari* may be granted by any of the Justices of the *King's-Bench*, whose Names shall be indorsed, and the Name of the Party at whose Instance it is granted; and before the Allowance of such Writ, the Party indicted prosecuting such *Certiorari*, shall find such Sureties as before-mentioned in this Act.

If granted in
Counties Pa-
latine.

And also upon every *Certiorari* granted within *Chester, Lancaster and Durham*, to remove Indictments as aforesaid, the Parties indicted prosecuting such *Certiorari*, shall find Sureties to try the said Indictments at the next Assizes, or General Gaol-delivery; and if convicted, shall be liable to like Costs, to be taxed as by this Act is provided, where the same are granted out of the *King's-Bench*.

If a Title
come in que-
stion for re-
pairing High-
ways.

Provided, If any Indictment be against any Person for not repairing Highways, Causeys, Pavements or Bridges, and the Title to repair the same may come in question; upon such Suggestion, and an Affidavit made thereof, a *Certiorari* may be granted to remove the same into the *King's-Bench*; Any Law to the contrary notwithstanding.

Provided,

Provided, That the Parties prosecuting Bail. such *Certiorari* shall find two Manucaptors to be bound in a Recognizance, with Condition as aforesaid.

Statute 8 & 9 *W. 3. cap. 33.* The Act made A&t made & 6 *W. & M. cap. 11.* Intituled, *An Act to prevent Delays of Proceedings at the Quarter-Sessions of the Peace*, shall be and is continued and made perpetual.

After the 21st of April 1697. the Party prosecuting any *Certiorari* to remove an Indictment from the Quarter-Sessions, may find two sufficient Manucaptors to enter in to a Recognizance before any one of the Justices of the *King's-Bench*, in the same Sum, and under the same Conditions as are required by the former Act, whereof Mention shall be made on the Back of the Writ, under the Hand of the Justice who took the same; which shall be as effectual to stay Proceedings, as if taken before a Justice of Peace in the proper County, and it shall be added to the Condition of the Recognizance that the Party suing out the *Certiorari* shall appear from Day to Day in the Court of *King's-Bench*, and not depart till discharged by the said Court.

The Recognizance may be before a Judge, &c.

Note, That upon an Indictment *Dna' Reg'* Defendant vers' *Jacob Banks Mil'* about *Trin' 3 Ann'*, upon an Indictment found against the Defendant at the Quarter-Sessions, and removed by *Certiorari* at the Suit of Mr. *Culpeper* the Prosecutor, both he and the Defendant took out Processes, made up Records, and took War-

tried the Cause upon the *Certiorari*, and was acquitted.

Warrants of *Nisi-prius* to try it at next Assizes after Removal ; and the Prosecutor not thinking fit to carry it on, the Defendant put in his Record, and was tried and acquitted ; and the Prosecutor moved for a new Trial.

Before the
Stat. 5 & 6
W. & M. c. 11.
what sort of
Process.

And here it was said by the Court, That before the Statute of 5 & 6 *W. & M. cap. 11.* concerning Removal by *Certiorari*, if the Defendant had removed an Indictment from any County besides *London* and *Middlesex*, he was *sine Die* out of Court, and only to be brought in upon Process ; whereupon he might have been outlawed, but in that Case the Defendant might have come in voluntarily : But if the Indictment had been removed from *London* or *Middlesex* by the Defendant, there he must have entred into a Recognizance to carry it to Trial the same Term, or the Sitting after : And that in Imitation of this Practice in these two Counties, was the late Act made ; whereby the Defendant upon *Certiorari* brought by him to remove an Indictment out of any County in *England*, must enter into a Recognizance to carry it down and try it the next Assizes, because of the great Delay of Justice, occasioned by the other Course : But if the Prosecutor does remove it up, the Defendant upon pleading does not enter into any Recognizance to try it ; and that makes the Question, Whether notwithstanding he may immediately carry it down to Trial ?

And it was said here and allowed, That this being removed up by the Prosecutor before Plea, the Defendant was out of Court, and *sine Die*, and might be brought in by Process, or sued to an Outlawry, or if he pleaded he might come in voluntarily; and if Indictment be found here, the Defendant upon pleading may give Security to try it. And after great Consideration, it was resolved, That in Civil Actions the Defendant can't carry down a Cause to Trial by *Proviso* till after a Default in the Plaintiff, except in special Cases, where the Defendant is as if he were a Plaintiff: As in *Quare Impedit*, *Replevin* and Prohibition, to have a Writ to the Bishop, Return or Consultation.

If the Prosecutor remove it before Plea.

That there can't be a Trial by *Proviso* in the King's Case, because there can be no Latches in the King.

If in the K.'s Case.

That the Defendant may at first Instant, by Consent of the Prosecutor, carry his Cause to Trial where the Queen is Party: But that all Causes of the Queen in this Court must be tried at Bar, if Mr. Attorney will not grant a Warrant of *Nisi prius*; which Warrant, if it be by Surprise, the Court will supersede it.

If Mr. Attorney will not grant a Warrant.

That in all Indictments and Informations here, or Indictments removed hither by the Prosecutor for Treason, Felony, or other inferiour Offence, the Defendant has no other Way to hasten on his Trial, but by Application to the Court: Who upon hearing the Reasons of Mr. Attorney, will as they see Ocoasion, either give him further Time,

Defendant may hasten the Trial upon Prosecutor's Removal by Application to the Court.

or

And

or fix him a peremptory Day for Trial, or give the Defendant Leave to bring it on himself.

But not without such Leave.

And the Court granted a new Trial, and directed it for a Rule, That thereafter the Defendant should never carry an Indictment removed hither by the Prosecutor, to Trial without Leave of the Court. *Vid. Mod. Cas. 245, 246, &c. Dna' Reg' vers' Banks Mil.*

Order removed by *Certiorari*, on which Appeal lies.

That if an Order be removed by *Certiorari* on which Appeal lies, before Appeal is brought not to be filed till the Court is informed of the Matter; and then they will grant a *Procedendo*, notwithstanding the *Certiorari*. *Mod. Cas. 40.*

When a *Certiorari* may not hinder Execution.

Where a *Certiorari* may not hinder Execution of a Distress by a Justice's Warrant, also if before a *Certiorari* comes Execution be done in part, notwithstanding the *Certiorari* the Officer may go on it; as if Execution be out, C. B. and Goods be seized before Writ of Error allowed, notwithstanding Writ of Error they may proceed to Sale. *Ibid. 83.*

Certiorari ad Informand' Conscienc' Cur'.

Vide eundem 206. An Argument that the Court may award a *Certiorari ad Informand' Conscienc' Cur'*, and whether the Court may send a *Certiorari* after *in nullo est Erratum* pleaded; and it seems they may.

Ex Officio.

Certiorari ex Officio, the Form of Entry. *Ibid. 208.*

Bail upon a *Certiorari*.

If one bring a *Certiorari* to remove an Indictment, and does not give Bail to try it according to the Statute, it is no *Superfedeas*; and

and a Record once filed in this Court, is never sent back, &c. *Mod. Caf. 33.*

How to prosecute a *Certiorari* upon the Game Statute 4 & 5 *W. & M.* for destroying of Game, see the Statute.

A *Certiorari* to certify Diminution in a Diminution, Writ of Error, lies of course; but if the whole Matters are entred upon Record, and made a *Concilium*, such Writ cannot be issued out without a Rule of Court. *1 Lill. Reg.*

222.

That the Court of *B. R.* will grant a new *Certiorari* to affirm, but not to reverse a Judgment. *Ibid.*

Where the Court will grant a new Trial after Verdict upon Certificate of the Justice of Assize. *Dyer 224.*

That a *Certiorari* upon a Writ of Error must be directed to the Chief Justice, and to certify any Original must be directed to the *Custos Brevium*, and to be returned by him, and not his Deputy. *Ibid.*

That a *Certiorari* lies from the *King's-Bench* to the *Cinque-Ports*, to certify an Order made by them for the Relief of the Poor. *2 Lev. 86.*

That where the Court which awards the *Certiorari* cannot hold Plea upon the Record it self, there but a Tenor shall be certified; for otherwise, if the Record it self should be removed, there would be a Failure of Right afterwards. *Dyer 187. Pl. 4. 1 D'Anvers's Gen. Abr. 792. 1 Roll. Abr. 395. Let. C.*

Note, That in Debt in *B. R.* upon a Judgment in *Bristol*, the Defendant pleaded *Nul tiel Record*, &c. and a *Certiorari* issued out of *Bristol*.

X

B. R.

B. R. to certify it; and it was certified under the Seal of the Court of *Bristol*, *Cro. El.* 821. and said the Course was so, and that it needed not to come in under the Great Seal. 1 *D'Anvers's Gen. Abr.* 792. in Margin, Let. C.

In Debt in
an inferiour
Court upon
Judgment in
B. R.

But upon an Action of Debt brought in an inferiour Court upon a Judgment in B. R. there upon *Nul tiel Record* pleaded, the Court of *Chancery* will grant a *Certiorari* to the Court of *King's-Bench*, to certify the Record into *Chancery*, and when it is there, send it into the inferiour Court by *Mittimus*. 1 *Lill. Reg.* 225. 1 *Roll. Abr.* 394. Pl. 2.

[See *Certiorari* in 1 *D'Anvers's Gen. Abr.* fol. 789, 790, &c.]

From a higher
to a baser
Court.

And there first said from 1 *Roll. Abr.* 394. That if a Record be pleaded in a more baser Court than that in which it is, the Court may grant a *Certiorari*. 4 *H. 6.* 23.

Chancery, Masters in Chancery.

Lord Chancellor.

BY *Artic. super Chart.* 5. 28 *Edw. 1.* The Chancellor, and the Justices of his Bench, shall follow the King, to the end he may have always near him such as be learned in the Laws, to order Matters that shall come to the Court.

[See after *Tit. Chancellor.*]

Remedy.

By Statute 36 *Ed. 3.* 9. Whosoever findeth himself grieved with any Statute, shall have his Remedy in the *Chancery*.

By

By Statute *Car. 2.* not printed, The Office of the Masters in *Chancery* being of very ancient Institution, and necessary Attendance for Dispatch of Business in the Court ; and it being thought more proper and safe for the Subject in general, that Affidavits, Answers, Recognizances, and Acknowledgments of Deeds should be in some publick Place than in private Studies and Houses as formerly, and for the just Encouragement of the said Masters for their Attendance and Support in due Discharge of their Places ; Enacted, That one publick Office be kept, and no more, near the Rolls, in which the said Masters, some or one of them, shall constantly attend for the Administring of Oaths, Caption of Deeds, and Recognizances, and Dispatch of all Matters incident to their Office, (References upon Accounts, and insufficient Answers only excepted) from Seven a Clock in the Morning until Twelve at Noon, and from Two in the Afternoon until Six at Night : And the said Masters may demand and take the Fees following, *viz.*

Masters in
Chancery to
have a pub-
lick Office,
&c.

- For every Affidavit or Oath taken in the said Office, 12 d. Their Fees settled.
- For every Bill of Costs to be taxed by them for the Plaintiff's not putting in his Bill, or not proceeding to reply, or for the Defendant's not appearing in due Time, 2 s. 6 d.
- For the Acknowledgment of every Deed to be inrolled, 2 s.
- For the Caption of every Recognizance, 2 s.

A Review of all the Statutes,

For every Exemplification examined by two of the said Masters, to each of the said Masters who shall examine the same, for every Skin of Parchment so examined,

2 s.

For every Report or Certificate to be made in pursuance of any Order made upon hearing of the Cause,

20 s.

And for every other Certificate or Report of any other made upon Petition or Motion only,

10 s.

To be paid by the Party that takes out the Report or Certificates.

If any Master receive other Fees.

And if any Master directly or indirectly receive any Money, Fee, Reward or Promise otherwise, or for any other Matter in this Act then as aforesaid, every such Master, after legal Conviction, to be disabled from the Execution of his Office, and forfeit to the Party grieved so much Money as he shall take contrary to this Act, and moreover 100 l. One Moiety to the King, and the other to the Party grieved that shall sue for the same.

And several Tables of the said Fees to be set up in the said Office, and in the Chapel of the *Rolls*, that all Parties may take Notice thereof.

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Clerk

Chancelloz.

BY Statute *Anno 1 W. & M. Sess. 1. cap. 21.* Commissioners to be appointed to execute the Office of Lord Chancellor or Lord Keeper of the Great Seal of *England* for the Time being, may use and exercise all and every the same and like Offices, Authority, Jurisdiction and Execution of Laws, and other Customs, Privileges, Emoluments and Advantages which the Lord Chancellor of *England*, or Lord Keeper of the Great Seal, of Right ought to use, have and execute, as belonging to their Offices, or otherwise; and shall have and take Place next after the Peers of this Realm, and Speaker of the House of Commons, unless any of them shall happen to be a Peer, and then to take Place accordingly.

Office of Lord Chancellor executed by Commissioners.

Any one Commissioner may hear Motions, and give Orders touching Interlocutory Proceedings, so as such one Commissioner in the Absence of the others shall not make Decrees, or put the Great Seal to any Thing, unless there be two present.

One Commissioner.

The nominating and appointing of the *Custos Rotulorum* in all Shires and Counties, shall be as is directed by a Statute made in the 37th Year of *Hen. 8.*

Custos Rotulorum.

The *Custos Rotulorum*, or other Person to whom of Right it doth belong, shall from Time to Time nominate and appoint the Clerk of the Peace.

Clerk of the Peace

Clerk of the
Peace, how
removable.

If any Clerk of the Peace shall misde-
mean himself in his Office, the Justices of
Peace in their General Quarter-Sessions, or
the major Part of them, upon Complaint in
Writing exhibited against him, may upon
Examination and due Proof thereof, suspend
and discharge him : And in such Case the
Custos Rotulorum, or other Person to whom
of Right it shall belong, shall appoint ano-
ther Person residing within such County, &c.
to be Clerk of the Peace in his Room ; and
in case of Neglect or Refusal to make such
Appointment before the next General Quar-
ter-Sessions after such Refusal, the Justices
of Peace at their General Quarter-Sessions
may appoint one.

Penalties.

Provided always, That he shall be liable
to all the Penalties, Conditions, &c. hereby
mentioned and expressed, and may be dis-
charged by the said Justices, as aforesaid.

Upon selling,
&c. the Place
of Clerk of
the Peace.

No *Custos Rotulorum*, or other Person to
whom it doth or shall belong to nominate a
Clerk of the Peace, shall sell the said Place
directly or indirectly, upon the Penalty that
every *Custos Rotulorum*, or other Person so
selling, and every Clerk of the Peace so
buying, shall be disabled to hold their Pla-
ces, and forfeit double the Value of what
shall be so given or taken ; to be recovered
by him or them that will sue for the same,
to their own Use, by any Action of Debt,
Suit, Bill, Plaint or Information in any of
their Majesties Courts at *Westminster*.

Every Clerk of the Peace, before he en-
ters upon his Office, shall in open Sessions
take this Oath, *viz.*

I A. B. do swear, That I have not, nor will pay any Sum or Sums of Money, or other Reward whatsoever, nor have given any Bond or other Assurance to pay any Money, Fee or Profit directly or indirectly to any Person or Persons whomsoever, for such Nomination or Appointment.

Oath by Clerk of the Peace.

So help me God.

Nothing in this Act shall relate to the Clerk of the Peace for the Dutchy and County Palatine of Lancaster.

County of Lancaster.

Charitable Uses.

Vide ante Bishops, &c. 250, &c.

BY Statute 7 & 8 W. 3. cap. 37. It shall and may be lawful to and for the King, his Heirs and Successors, when and as often as he or they shall think fit, to grant to any Person or Persons, Bodies Politick or Corporate, their Heirs and Successors, Licence to alien in *Mortmain*; and also to purchase, acquire, take and hold in *Mortmain* in Perpetuity, or otherwise, any Lands, Tenements, Rents or Hereditaments whatsoever, of whomsoever the same shall be holden.

Licence to grant and purchase Lands in Mortmain.

And such Lands, &c. so aliened or acquired, and licensed, shall not be subject to any Forfeiture by reason of such Alienation or Acquisition.

Chirographer.

His Fees.

BY Statute 2 H. 4. 8. The Chirographer, or his Deputy, shall take but 4 s. for a Fine, in Pain to forfeit his Office, be judged before the Court, suffer a Year's Imprisonment, and pay treble Damages to the Party grieved; to be recovered before the Justices of the same Court. *Vide ante* 57.

Claim.

Vide ante Tit. Amendment, and 4 & 5
Ann. cap. 16.

Clerk of the Crown.

His Fee.

BY Statute 2 H. 4. 10. When divers Persons are jointly indicted, the Clerk of the Crown shall take but one Fee, *viz.* 2 s. for them all, and not several Fees for each Person. *Vide ante* 12, 284.

Clerk of the Market.

Of the King's House.

BY Statute 13 R. 2. 4. The Clerk of the Market of the King's House shall execute his Office duly, and all false Weights and Measures shall be burnt.

The said Clerk shall take no common Fine, but every one shall be punished according to their Demerit.

He shall not ride with above six Horses, and shall tarry no longer in a Place than Need requireth.

If

If he offend against this Law, he shall pay to the King for the first Time 5 *l.* for the second 10 *l.* for the third 20 *l.*

By Statute 17 *Car.* 19. There shall be one Weight and one Measure, according to the Standard of the *Exchequer*, throughout the Realm, and every Measure of Corn shall be striked without Heap. **Weights and Measures.**

The Clerk of the Market of the King or Prince's Household, and his Deputies, shall only execute their Offices within the Verge, and not elsewhere: And Head Officers of Corporations, and Lords of Liberties, and their Deputies, may execute theirs in their several Precincts, as they might have done before this Act was made. **Within the Verge.**

If any of the Officers aforesaid shall seal any Weight or Measure which is not agreeable to the said Standard, or shall refuse to seal such as are agreeable thereunto, (the Party paying only such Fees for the Allowance thereof as are warranted by Statute, or some ancient Custom) they and their Deputies (respectively) shall for every such Offence forfeit 5 *l.* to be levied as aforesaid, to the Use of the Poor where the Offence was committed. **Of sealing Weights and Measures.**

If they shall take any other Fine, Fee, Reward, or Sum of Money, than what are allowed by Statute, or some such ancient Custom, for the Signing or Examination of any Weights or Measures which have been formerly marked or sealed, or shall impose any Fine or Amerciament without a legal Trial of the Offence, or shall otherwise **Fines and Penalties of such Clerks, &c.** misdemean

misdemean themselves in the Execution of their Office, and shall be thereof lawfully convicted, they shall forfeit for the first Offence 5 *l.* for the second 10 *l.* and for every other Offence 20 *l.* to be levied as aforesaid, to the Use of the Poor where the Offence was committed.

A Saving.

He that is fined or amerced by this Act, shall not be again punished for the same Offence by force of any former Law or Statute.

This Act shall not extend to the Measure of Rent-corn, nor to Water-measure, nor to Colleges or Societies.

General Issue and Costs.

If any Officer, authorized to execute this Statute, shall be impleaded for any Act he shall do therein, he shall plead the general Issue, Not guilty, and yet give this Statute or any other special Matter in Evidence: And if he be found Not guilty, or the Plaintiff be nonsuited, he shall recover treble Costs.

Clerks of Signet and Privy Seal.

Their Fees, &c.

BY Statute 27 H. 8. 11. How and in what Manner the King's Grants, Writings and Leases, shall pass the Privy Signet, the Privy Seal, and the Great Seal, and in what Time they shall pass those Seals; and Forfeitures set upon the Clerks of the Privy Signet, and Privy Seal, for not doing their Duty; and what Fees they shall take for those Writings, and what Fees shall be paid to any Person for the same; and how and where such Writings shall come to the Great Seal, with an immediate Warrant, and not

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pass the Signet or Privy Seal, and what Fees shall be then paid therefore; and how and under what Seals the King's Leases, Grants, and Writings of Lands or Offices of the County Palatine, or Dutchy of *Lancaster*, shall pass; and what Grants, Leases or Writings for the King may be made without his Warrant, and divers Articles at large concerning these Matters. [*For these, see the Statute it self at large.*]

Commissioners,

Vide ante 179.

BY a late Act, for giving the Commissioners of Sewers for the City of *London* the same Powers as the Commissioners of Sewers for Counties have, and to oblige Collectors for the Sewers to account; enacted, That the Persons authorized by the Mayor, Aldermen and Common-Council-Men of *London*, for the Purposes in the Acts 19 Car. 2. and 22 & 23 Car. 2. mentioned, have of Right exercised all the Powers vested in Commissioners of Sewers in any other County, and shall be deemed Commissioners of Sewers within the said Limits, but subject to the Limitations of the Statute of 22 & 23 Car. 2.

Collectors refusing, on Notice, to appear before the Commissioners at their publick Meetings, and to give a just Account on Oath of the Monies by them received, or not collecting such Sums as shall be specified

Commissioners of Sewers, &c.

Penalties upon Collectors refusing to account.

fied in their Rolls, or not paying the Money collected into the Chamber of *London*, according to the Directions of the said Act, shall forfeit for every such Offence a Sum not exceeding 10 *l.* over and above what Money they shall be chargeable with, to be set by any Seven of the Commissioners, and to be levied by Distress and Sale, &c. All which Fines shall be paid into the Chamber for maintaining the publick Drains and Sewers.

Not to extend
to the Lord
Mayor.

Nothing in this Act shall extend to the Conservatorship of the River of *Thames*, or alter the Powers of the Lord Mayor, touching the same.

General Issue
pleadable,
&c.

Any Action, &c. after the 1st of *May* 1709, commenced against any Person, for any Thing done in pursuance of the recited Acts, or this Act, such Person may plead the General Issue, and give the said Acts and the Special Matter in Evidence, and recover treble Costs.

This Act, and the said recited Acts, shall be deemed Publick Acts.

Commissioners may
charge Copy-
hold Lands.

Again, by another late Act for rendering more effectual the Laws concerning Commissions of Sewers; enacted, That after the 25th of *March* 1709. it shall be lawful for any Six of the Commissioners to put in Execution the Laws in force concerning Sewers, for Non-payment of any Charge assessed upon any Copyhold, or Customary Lands, within the Limits of their Commission, and to decree and ordain the said Copyhold, &c.

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to be charged from the Owners; the said Decrees to be made as Decrees concerning Freehold Lands are by the Laws in force.

All Purchasers of such Copyhold Lands, &c. shall before Entry, or making Profit of the same Lands, compound with the Lords of the Manors for the usual Fines, and the Lords at the next Court shall grant to such Vendee the same, by Copy of Court-Roll, or such Estate or Interest as to them shall be decreed, reserving the ancient Rents, &c. and admit them Tenants of the same Copyhold, &c. and receive their Fealty.

Purchasers to compound with the Lords, &c.

Any Six of the Commissioners of Sewers, by Warrant, may give Authority to any Person to levy the Sums of Money by them assessed upon the Lands, Meadows, &c. chargeable with any Sesses, &c. by Distress and Sale of the Goods of such Person as shall not pay, rendering the Overplus to the Owner.

Assessments how to be levied.

Conditions.

BY Statute 32 H. 8. 34. Grantees of Reversions may take Advantage of Conditions and Covenants against Lessees of the same Lands, as fully as the Lessors, their Heirs or Successors, might have done.

Who may take Advantage of them.

Lessees may also have the like Remedy against the Grantees of Reversions, which they might have had against their Lessors or Grantors, their Heirs or Successors; all Advantage of Recoveries in Value, by reason of any Warrant in Deed or Law by Voucher or otherwise, only excepted.

Conti-

Continuance, and Discontinuance.

[See before *Feofails*, p. 33, &c. and see
1 *Lill. Reg.* and 2 *D'Anvers Gen. Abridg.* Tit.
Amendment, and Tit. *Continuance*, and Tit.
Discontinuance.]

Coroners, concerning their Officers
Fees and Duty.

BY *Westm.* 1. 10. 3 *E. 1.* Sufficient Men
of the most wise and discreet Knights,
shall be chosen in all Counties for Coro-
ners.

The Sheriffs shall have Counterparts with
the Coroners of all Things which concern
their Office.

They shall take nothing of any Man to
do their Office, in Pain of great Forfeiture
to the King.

By Statute 4 *E. 1.* *Officium Coronatoris*. [See
the Statute at large.]

By Statute *de Exonia, de Inquisitione super*
Coronatores, 14 *E. 1.* [See *the Statute at large*,
together with the Articles thereunto annexed.]

By Statute 14 *E. 3.* 8. A Coroner shall
have Sufficient in the County whereof to
answer all People.

By Statute 28 *E. 3.* 6. Coroners shall be
chosen in the full Counties, of the most con-
venient and lawful Men; saving unto the
King and other Lords (that may make Coro-
ners) their Franchizes.

By Statute 17 H. 8. 7. Where one is slain by Misadventure, the Coroner shall execute his Office without Fee, in Pain of 40 s.

Justices of Assize and Peace have Power to enquire of, and punish, the Defaults and Extortions of Coroners. [See 2d Part of D'Anvers's Gen. Abr. 209, &c. Tit. Coroners.]

Costs and Damages.

Vide ante Amendment, p. 47, &c.

By Statute 3 H. 7. 10. Where any Person bound by a Judgment shall sue (before Execution had) a Writ of Error to reverse it, if the Judgment be affirmed, the Writ discontinued, or the Party that sueth it be nonsuit, the Party against whom the Writ is brought shall recover his Costs and Damages at the Discretion of the Justices before whom the said Writ is sued.

Costs upon a Writ of Error.

By Stat. 19 H. 7. 20. The Stat. of 3 H. 7. 10. is confirmed, and shall be duly put in Execution.

By Statute 23 H. 8. 15. If the Plaintiff be nonsuit, or overthrown by lawful Trial in any Action, Bill or Plaint, for Trespas upon the Statute of 5 R. 2. 7. (*which see in forcible Entry, 1.*) or for any Debt or Covenant, upon Specialty or Contract, or for Detinue, Account upon the Case, or upon any Statute, the Defendant shall in such Case have his Costs, to be assessed by the Judge or Judges of the Court, and to be recovered as the Plaintiff might have recovered his, in case Judgment had been given for him. [See *after.*]

For the Defendant upon a Nonsuit, &c.

Here,

Forma pauperis.

Here, he that sues in *Forma pauperis*, shall (not pay Costs, but) suffer such Punishment as the Justices or Judge of the Court shall think fit.

King's Suit.

By Statute 24 H. 8. 8. There shall be no Costs awarded to the Defendant, when any Action is sued to the King's Use.

No more Costs than Damages.

By Statute 43 Eliz. 6. In Personal Actions in the Courts at *Westminster*, (being not for Land or Battery) when it shall appear to the Judges (and so by them signified) that the Debt or Damages to be recovered, amount not to the Sum of 40 s. or above, the said Judges shall award to the Plaintiff no more Costs than Damages, but less, at their Discretion.

For the Defendant upon a Nonsuit, &c.

By Statute 4 Jac. 1. 3. If the Demandant or Plaintiff be nonsuit, or overthrown by lawful Trial, in any Action whatsoever, the Tenant or Defendant shall have Costs, to be assessed and levied as Costs are to be assessed and levied by the Statute of 23 H. 8. 15.

Slander.

By Statute 21 Jac. 1. 16. In Actions of Slander, if the Jury find or assess the Damages under 40 s. the Plaintiff shall recover no more Costs than Damages. [*Vide postea* Process, and *ante* 47.]

For not declaring within 3 Days, &c. in B. R.

By 8 Eliz. cap. 2. When any Person shall sue forth of the *King's-Bench* any *Latitat*, *Alias*, and *Pluries Capias*, against any Person who thereupon doth appear, and put in Bail, if the Plaintiff do not declare within three Days after, or do after Declaration delay or discontinue his Suit, or be nonsuit, the Judges of that Court shall thereupon award Damages against the Plaintiff.

The

The like shall be done in the Courts of the *Simile in*
Marshalsea, London, and all other Corpora- *other Courts.*
 tions and Liberties where the Courts are
 kept *de Die in Diem*; but where they are not
 so kept, then the Plaintiff must declare at
 the next Court after Appearance, unless he
 have longer Time allowed him by the
 Court.

If any shall maliciously (for Vexation and *For arresting*
 Trouble) cause or procure any Person to be *one in the*
 arrested or attached to answer in any of the *Name of an*
 said Courts at the Suit of any Person, where- *unknown*
 as there is none such, or without the Con- *Person, &c.*
 sent and Agreement of the Party at whose
 Suit such Arrest and Attachment is procu-
 red, the Party so causing or procuring the
 same, and thereof convicted by Indictment,
 Presentment, the Testimony of two or more
 Witnesses, or other due Proof, shall suffer
 six Months Imprisonment without Bail, and
 shall not be enlarged until he have satisfied
 the Party grieved his treble Damages, and
 besides, shall forfeit unto him (the Plaintiff,
 if he be known) 10 l. to be recovered (as
 also the said treble Damages) by Action of
 Debt, Bill or Plaint, in any Court against
 the Party so offending, his Executors or
 Administrators, in which no Effoin, &c.
 shall be allowed.

Note, Costs and Charges are given occa- *Costs.*
 sionally in many particular Actions, to be
 collected by Observation.

No Costs for the Defendant, if he hath *Where not*
 Judgment on Demurrer to a Plea in Abate- *for a Defen-*
 ment. *Mod. Caf. 88.* *dant.*

Y

Wife

Where Costs
against Exe-
cutor, &
à contra.

No Assets, no
Costs.

Costs against
Executor.

Simile.

No Costs.

Wife Executrix, and Husband and Wife declare as Executors *sur Indebitat' Assumpsit*; if upon Nonsuit, they shall pay Costs upon 23 H. 8. And it seems not here; for that if Testator's Goods be taken and converted before they come to the actual Possession of the Executor, they are no Assets, and therefore 'twere hard to make him pay Costs, *Idem* 91, 94. But if Executor brings Trover upon his own Possession, he shall pay Costs. *Idem* 92.

And if he lose Testator's Goods out of his Possession, and thereupon declares as Executor to J. S. and upon the Evidence it appears they were his own proper Goods, he shall be nonsuited, and pay Costs. *Idem* 94, 181.

And it was laid down for a Rule, That where an Executor brings an Action, in which he need not name himself Executor, there if he be nonsuit, he shall pay Costs, *2. ibid.* but in this principal Case, it seems the Husband alone should have brought the Action: And *per tot' Cur'*, Defendant must have Costs. *Idem* 182.

Where an Executor shall pay no Costs upon a Trover, or *Insimul computasset*. *Id.* 92.

See several Matters for Costs and Charges in 1 *Lill. Reg.* 206, 207, &c.

But see more especially in the 2d Vol. of *D'Anvers's Gen. Abridg. Tit. Costs.* As,

1. To whom Costs shall be given. *Idem* 220.
2. In what Actions. *Ibid.*
3. Where double or treble Costs. 223.
4. Where

4. Where joint or several. *Ibid.*
5. Where and in what Cases the Defendant shall have his Costs. 224.
6. Costs and Damages in Replevin. 226.
7. Costs in a Writ of Error. 227.

And as to Damages, who shall recover them, and for what, see 2 *D'Anvers's Gen. Abr.* from 443, to 464.

Covenant. (*Vide Breaches.*)

See a large Doctrine concerning *Covenants*, in 2d Vol. of *D'Anvers's Gen. Abr.* from 228, to 251.

County, Turn, and Leet.

BY *Magna Charta* 35. 9 *H. 3.* County- When, where
Courts shall be held from Month to and how to be
Month, or longer, if formerly so used; and held.
the Sheriff (or his Bailiff) shall keep his
Turn in the Hundred at the usual Place,
and that only twice a Year, *viz.* after *Easter*
and *Michaelmas*: Leets also shall be at *Mi-*
chaelmas, without Occasion. [*See also* 1 *Jac. 1.*
cap. 5. concerning Steward of a Leet making
unjust Benefits.]

By *Marlbr. 10. 25 H. 3.* Archbishops, Bi-
shops, Abbots, Priors, Earls, Barons, or Re-
ligious Men or Women, are not to appear
at the Sheriff's Turns, except for some other
Cause; and such as have Hundreds of their
own, shall not be bound to appear at such
Turns, but only in the Bailiwicks where they
dwell.

A Review of all the Statutes;

Barrettors,
&c. not to
 make Suit,
&c.

By *Westm.* 2. 32. 3 *E.* 1. No Sheriff shall suffer Barrettors, or Maintainers of Quarrels, or Stewards of great Lords, or other (unless Attorney for his Lord) to make Suit, or to give Judgments in the Counties, or to pronounce them, if he be not required so to do by all the Suitors, and Attornies of the Suitors there present, in Pain that both the Sheriff and they shall be grievously punished by the King.

Turn when.

By Statute 31 *E.* 3. Stat. 1. 15. Every Sheriff shall hold his Turn Yearly one Time within the Month after *Easter*, and another Time within the Month after *Michaelmas*, in Pain to lose his Turn for the Time.

Suffex.

By Statute 19 *H.* 7. 24. The Shire-Court for *Suffex* shall be holden one Time at *Chichester*, and the next Time at *Lewis*, alternately, in Pain that the Courts otherwise kept, and the Things therein transacted, shall be void.

County-Courts.

By Statute 2, 3 *E.* 6. 25. County-Courts shall be adjourned from Month to Month, and no longer.

Northumberland.

The Sheriff of *Northumberland* shall keep his County-Court at *Alnewick*, and not elsewhere.

Covin and Collusion.

Concerning *Covin and Collusion* in Actions *&c.* relating to Lands, vide 2 *D'Anvers's* Grants *Abr.* 309.

Court

Courts.

Of several particular Courts, and of the Jurisdiction and Practice thereof, *vide* Lill. Reg. 198, 199, &c. And more particularly D'Anvers's Abr. from fol. 252, to 307.

Also of Courts, and their Commissions, *Ibid.* 308.

Rule of *Averments* upon Actions in inferior Courts, to shew it to be within their Jurisdiction. *Mod. Cas.* 223.

Custos Rotulorum. Vide Chancellor.

BY Statute 37 H. 8. 1. None shall be *Custos Rotulorum*, but such as shall have a Bill signed by the King's Hand for the same, which shall be Warrant for the Lord Chancellor to put and continue him in the Commission to be *Custos Rotulorum*, until the King shall appoint another.

The *Custos Rotulorum* may execute that Office by a Deputy learned in the Laws, and able to supply that Place.

The *Custos Rotulorum* shall have Power to appoint the Clerk of the Peace, who may also execute it by a sufficient Deputy, approved by the *Custos Rotulorum*.

This Act shall not inhibit the Archbishop of York, the Bishop of Durham, the Bishop of Ely, and all others, having lawful Power (by the Grant of the King, or his Progenitors) to make *Custos Rotulorum* within their

Exceptions.

several Jurisdictions, to use the same Liberty which they had before.

Lord Chan-
cellor.

By Statute 3, 4 E. 6. 1. The Lord Chancellor, or Keeper, shall appoint the *Custos Rotulorum* in every County of England, Wales, and other the King's Dominions, who may execute his Office by himself, or by his Deputy: Howbeit, the Power of others is saved, who have Power to name the *Custos Rotulorum*. [*Vide Chancellor.*]

D.

Days in Bank.

Leap-Year.

BY Statute *De Anno Bessextili*, 21 H. 3. The Day increasing in the Leap-Year, and the Day next going before, shall be accounted for one Day: And this was done to avoid the Doubt of the Year and Day, that were wont to be assigned to sick Persons, being impleaded, to the end they might know (when the Leap-Year happened) how to reckon their Year and Day.

[*Vide Mod. Cases* 252. That the Kalendar is settled by Law, and Part of it, and the Moveable Feasts by the Kalendar. *Vid. eundem* 160.]

By

By Statute 51 H. 3.

<i>Utas Sancti Mich.</i> <i>Quinzime Mich.</i> <i>Tres Mich.</i> <i>Craftino Anim.</i> <i>Craftino Mart.</i> <i>Utas Martini,</i> <i>Quinzime Mart.</i> <i>Utas Hillarii,</i> <i>Quindena Hillarii,</i> <i>Craft. Purific.</i> <i>Utas Purific.</i> <i>Quindena Paschæ,</i> <i>Tres Paschæ,</i> <i>Mense Paschæ,</i> <i>Quinque Paschæ, or</i> <i>Craft. Ascens.</i> <i>Utas Trin.</i> <i>Quindena Trin. or</i> <i>Craft. S. Joh. Bapt.</i> <i>Utas S. John Bapt.</i> <i>Quindena S. John Bapt.]</i>	Day shall be given thereupon unto the	<i>Utas Sancti Hill.</i> <i>Quinzime Hill.</i> <i>Craftino Purif.</i> <i>Quinzime Paschæ.</i> <i>Tres Paschæ.</i> <i>Mense Paschæ.</i> <i>Quinque Paschæ.</i> <i>Utas Trin. & sometimes</i> <i>in Craft. S. John Bap.</i> <i>Craft. & Utas, S. J. Bap.</i> <i>Quindena, S. John Bap.</i> <i>Utas Mich.</i> <i>Quindena Mich.</i> <i>Tres Mich.</i> <i>Mense Michaelis.</i> <i>Craft. Anim.</i> <i>Craft. Mart.</i> <i>Utas Mart.</i> <i>Quindena Mart.</i>
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And so every Term shall answer to other.

By Statute 51 H. 3. Concerning general
Days in a Writ of Dower :

If the Writ come in	] [	Day shall be given until	] [	Octabis Mich.	Craftino Animarum.
				Quindena Mich.	Craft. Martini.
				Tres Mich.	Octabis Martini.
				Mense Mich.	Quindena Mart.
				Craftino Anim.	Octabis Hillarii.
				Craftino Mart.	Quindena Hillarii.
				Octabis Mart.	Craftino Purif.
				Quindena Mart.	Octabis Purif.
				Octabis Hill.	Quindena Paschæ.
				Quindena Hill.	Tres Paschæ.
				Craftino Purif.	Mense Paschæ.
				Octabis Purif.	Craftino Ascens.
				Quindena Paschæ,	Octabis Trin.
				Tres Paschæ,	Quindena Trin.
				Mense Paschæ,	Craft. Job. Bapt.
				Quinque Paschæ,	Octabis Job. Bapt.
				Craft. Ascens.	Quindena Johannis.
				Octabis Trin.	Octabis Mich.
				Quindena Trin.	Quindena Mich.
	] [		] [	Craft. Johannis,	Tres Michael.
				Octabis Johannis,	Mense Mich.
				Quindena Johannis,	Craftino Anim.

Dower.

By Marlbridge, 12. 52 H. 3. In Dower (*unde nihil habet*) four Days shall be given in the Year, and more, if conveniently may be; so that they shall have five or six Days (at least) in the Year.

Darrein Presentment.

In Affizes of Darrein Presentment, and a Plea of *Quare Impedit*, Days shall be given from Fifteen to Fifteen, or from three Weeks to

If a Writ in any real Action come in, and be returnable: [S

to three Weeks, according to the Distance of the Place.

In a *Quare Impedit*, if the Disturber come not in upon Summons, nor cast an *Essoin*, he shall be attached at another Day; when if he come not, nor cast an *Essoin*, the great Distress shall issue against him; when if he come not, a Writ shall be sent to the Bishop, that the Disturber claim not for that Time to the Prejudice of the Plaintiff, saving unto him his Right at another Time.

The same Law shall be observ'd for Attachment, as for Distresses, so that the second Attachment shall be made by better Pledges, and after the last Distress.

By Statute 32 H. 8. 21. There shall be only four Days of Return in *Trinity-Term*, viz. *Crast. Trin. Octab. Trin. Quindena Trin. and Tres Trin.*

This Term shall hereafter begin upon the Monday after *Trinity-Sunday*, for keeping of *Essoins*, *Profers*, *Returns*, and other Ceremonies formerly used; and the full Term shall begin the Friday after *Corpus Christi* Day, being always the Friday next ensuing.

If a Writ in any real Action come in, and be returnable, [*Octabis Hill.*
[*Quindena Hill.*
[*Crastino Purif.*
[*Octabis Purif.*
[*Crast. Trin.*
[*Octab. Trin.*
[*Quindena Trin.*
[*Tres Trin.*
[See after.]

Days shall be given in [*Crastino Trin.*
[*Octab. Trin.*
[*Quindena Trin.*
[*Tres Trin.*
[*Crast. Anim.*
[*Crast. Martini.*
[*Octabis Martini.*
[*Quindena Mart.*

If

If any Writ of Dower
come in, and be re-
turnable,

Quindena Paschæ,
Tres Paschæ,
Mense Paschæ,
Quinque Paschæ, or
Craft. Ascens.
Craftino Trin.
Octabis Trin.
Quindena Trin.
Tres Trin.

Days shall be given in

Craftino Trin.
Octab. Trin.
Quindena Trin.
Tres Trin.
Octab. Mich.
Quindena Mich.
Tres Mich.
Mense Mich.

All common Writs and Proceſſes (as well
perſonal as mixt) ſhall keep the ſaid Re-
turns of *Trinity-Term*, ordained by this Act.

Special Days.

This Act ſhall not prohibit the Juſtices of
the King's Courts of Record to aſſign ſpe-
cial Days of Return, in ſuch Caſes and Pro-
ceſſes as have uſed to have ſpecial Days aſ-
ſigned.

The ſaid Statute of *Marlbridge 12.* and
alſo *5 Ed. 3.* (which ſee in *Attaint*) being
not contrariant to this Act, ſhall remain firm,
notwithſtanding this Act.

Michaelmas-
Term.

By Statute *16, 17 Car. c. 6.* There ſhall be
only ſix Days of Return in *Michaelmas-Term*,
viz. *Tres Michael. Mense Michael. Craft. Anim.*
Craftino Mart. Octabis Mart. and Quind. Mart.

When to
begin.

Michaelmas-Term ſhall hereafter begin at
Tres Mich. for the keeping of Effoins, Pro-
fers, Returns, and other Ceremonies here-
tofore uſed, and the full Term ſhall be four
Days after: Howbeit, if the Beginning of
the Term or the ſaid fourth Day happen to
be *Sunday*, then the next Day is to be kept
for it.

If any Writ in any real Action (other than Writs
of Entry for common Recoveries, Writs of
Right of Advowſon, and Writs of Dower,

Provi-
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Effoin-d
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If any Writ in any real Action (other than Writs of Entry for common Recoveries, Writs of Right of Advowson, and Writs of Dower, *unde nihil habet*, hereafter mentioned) come in, and be returnable,

Tres Mich.
Mense Mich.
Crastino Anim.
Crastino Mart.
Octab. Mart.
Quindena Mart.
Octab. Hill.
Quindena Hill.
Crast. Purif.
Octab. Purif.
Quindena Paschæ,
Tres Paschæ,
Mense Paschæ,
Quinque Paschæ,
Crast. Ascens.
Crast. Trin.
Octab. Trin.
Quind. Trin.
Tres Trin.

Then Days shall be given

Crastino Purif.
Octabis Purif.
Quindena Paschæ.
Tres Paschæ.
Mense Paschæ.
Quindena Paschæ.
Crast. Ascens.
Crast. Trin.
Octab. Trin.
Quindena Trin.
Tres Trin.
Tres Mich.
Mense Michaelis.
Crastino Anim.
Crast. Mart.
Octab. Mart.
Quindena Mart.
Octabis Hillarii.
Quindena Hillarii.

Provided, That in Writs of Dower (*unde Dower. nihil habet*) after Issue joined 15 Days between the *Teste* and the Term shall suffice, as is used in personal Actions.

Crastino Ascens. shall be a good Return, *Crast' Asc.* notwithstanding there be not 15 Days between the *quarto Die* of that Return, and the Effoin-day of the Return of *Crast. Trin.* Also the Return from *Tres Mich.* to *Crast. Anim.* shall be a good Return, albeit there be not 15 Days between the *quarto Die* of *Tres Mich.* and the Effoin-days of *Crast. Anim.*

All Writs of Summons *ad Warrantizandum* Summons *ad* against Vouchees, upon common Recoveries *Warr'.* had in Writs of Entry upon the Appearance
of

of the Tenant, and all Writs of Right of Advowson, shall be abridged to five Returns, as Writs of Summons, *ad Warrantizandum* in Writs of Dower have been heretofore used.

Special Days. This Act shall not prohibit the Justices of the King's Courts of Record, to assign special Days of Return in such Cases and Processes as have used to have special Days assigned.

Darrein Presentment, &c.

The Days in Assize of *Darrein Presentment*, and in Plea of *Quare Impedit*, limited by the said Statute of *Marlbridge*, and also the Days given in Attaint, limited by 5 *Ed.* 3. 8. and 23 *H.* 8. 3. (which see in *Attaint*) being not contrary to the Tenor of this Act, shall be held firm, notwithstanding this Act.

Deaths of Persons beyond the Seas, and of Estates for Lives.

Persons accounted as dead.

BY Statute 19 *Car.* 2. c. 6. enacted, That if any Prisoner, Person for whose Life or Lives any Estates have been or shall be granted, shall remain beyond Seas, or otherwise absent themselves in the Realm for seven Years, and no sufficient Proof made of their Lives, shall be accounted naturally dead.

Exception to Jurors.

That in any Action where the Life or Death of such Person shall come in question between the Lord, or Reversioner, or Tenant, the said Lessor or Reversioner may take Exception to any of the Jurors that his real Estate is held by Lease or Copy for Lives,

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may re-
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Distress
by the
Bailiff,

Lives, who upon Proof shall be set aside as in other Challenges.

That nothing in this Act shall extend to Lands held by the Life or Lives of any the Persons attainted of Treason, for the horrid Murder of his late Majesty, who now conceal themselves; which Lands were vested in the King, and now granted to the Duke of York. Exception.

If any Persons shall be evicted out of any Lands and Teneiments by Vertue of this Act, and afterwards the Person upon whose Life the Estate depends shall return, or be proved living, or to have been living at the Time of the Eviction, then the Tenant or Lessee who was outed, or his Executors, &c. may re-enter, repossess and enjoy the said Land in their former Estate, so long as the Persons upon whose Lives the Estate depends shall live, and shall recover against the Lessors, &c. or other Persons, upon Action for Damages, the full Profits, with lawful Interest. If afterwards such Person be proved living.

Debt.

BY *Westm. 2. 13 Ed. 1.* None shall restrain a Foreigner in any City, Borough, Town, Market or Fair, for any Debt, wherefore he is not Debtor or Pledge, in Pain to be grievously punished; and if he be, the Distress shall be re-delivered without Delay by the Bailiff of the Place, or the King's Bailiff, if need be. Foreigner not to be restrained for Debt.

By

Warden suffering a Prisoner to go at large.

By Statute 1 R. 2. 12. No Warden of the *Fleet* shall suffer any Prisoner, (being in by Judgment) to go at large, by Mainprize, Bail or Bafton, without agreeing with the Party for the Thing adjudged (unless it be by Writ, or other Command of the King) in Pain to lose his Office.

The Warden being attainted thereof by due Process, the Plaintiff shall have their Recovery against him by Bill of Debt.

If to be removed, one confesses himself Debtor to the King.

If any Person, being judged to another Prison, shall (with Purpose to be removed to the *Fleet*, and there to have more Liberty) confess himself Debtor to the King, the said Recognizance shall be received; and if he be not Debtor to the King upon Record, he shall be remanded, and there remain until he hath agreed with the Party, and afterwards shall be sent to the *Fleet*, and there remain until the King be satisfied the Cognizance.

Debtor making a fraudulent Conveyance, and then absconding.

By Statute 2 R. 2. Parl. 2, 3. Where a Debtor makes a fraudulent Conveyance to defraud the Creditor, if upon the *Capias* for the Debt, the Sheriff return he hath not taken him, because of some privileged Place where he lies; the Sheriff shall have another Writ to make Proclamation once a Week, five Weeks together, at the Gate of the privileged Place, that the Party appear at the Day comprized in the last Writ; and then upon Return of the said last Writ, that Proclamation is made accordingly: If the Party appear neither by himself, nor his Attorney,

Judgment

Judgment shall be given against him upon the Principal for his Default, and also (the Collusion being proved) Execution had of all his Goods and Lands without the Place privileged, as well those demised as others.

By Statute 3 Jac. 15. Every Citizen and Freeman of *London*, and every other Person there inhabiting, being a Tradesman, Vicar, or Labourer, which hath any Debt due to him, not amounting to 40 s. by any such Person afore said, may cause the Debtor to be summoned to the Court of *Requests* at *Guildhall*, upon a Writing to be left at the Debtor's House by an Officer of the same Court, or by some other reasonable Warning, to appear before the Commissioners there, who (or any three of them) shall have Power to make Orders therein, to be registred in a Book, and duly observed by both Parties.

Debts recoverable in the Court of Requests, &c.

The Commissioners also (or any three or more of them) have Power to administer Oaths both to the Parties and Witnesses.

Oaths.

If any such Person, as afore said, for any such Debt commence any Suit elsewhere, against any other like Person, and that it appear to the Judge upon the Defendant's own Oath, or other sufficient Testimony, that he is a Freeman, or Inhabitant of *London*, as afore said, and also that the Damages sued for amount not to 40 s. the said Judge shall not allow to the Plaintiff any Costs of Suit at all, but shall award to the Defendant his reasonable Costs.

If the Creditor sue elsewhere. Costs to Defendant.

None

Upon Refusal to appear.

None shall refuse to appear upon due Summons, or to obey the Commissioners Orders, in Pain to be imprisoned in one of the Counters of the said Officer, or any other of the Serjeants at Mace of the City, there to remain until their Orders be performed.

Exception.

This Act shall not extend to any Debt for Rent, real Contracts, or concerning Testaments, Matrimony, or any Thing belonging to the Ecclesiastical Court.

Evidence by a Shop-Book.

By Statute 7 Jac. 12. None keeping a Shop-Book, his Executors or Administrators, shall be allowed to give it in Evidence for Wares or Work, above one Year before the Action brought, unless they have obtained a Bond or Bill for the Debt, or brought an Action thereupon within one Year after the Wares delivered, or Work done.

Act not to extend, &c.

This Act shall not hold Place between Merchant and Merchant, Tradesman and Tradesman, or Merchant and Tradesman for any Thing falling within the Compass of their mutual Trades and Merchandize.

[See many Cases and Pleadings concerning Debt, &c. in 2d Vol. of D'Anvers's General Abr. from 482, to 512.]

Deceit

Decies tantum.

BY Statute 38 *Ed. 3.* 12. If a Juror take Upon a Ju-
any Thing of either Party to give his Verdict, and be attainted thereof by Proceſs to give Ver-
dict. contained in the Article of *Jurors* of the
34th of *Ed. 3.* 8. (which ſee in *Jurors*,) he
ſhall pay ten Times ſo much as he hath ta-
ken, to be divided betwixt the King and
the Proſecutor: And all Embraceors that
procure ſuch Inqueſt, ſhall incur the like
Puniſhment.

If the Juror or Embraceor have not Imprison-
whereof to make Gree, he ſhall ſuffer a ment.
Year's Imprisonment.

But no Juſtice, or other Officer, ſhall en-
quire of this Offence *ex Officio*. *Vide 2 D'An-*
vers's Gen. Abr. 464.

Declaration.

BY Statute 36 *Ed. 3.* 15. By the ancient
Terms and Forms of Pleadings, no Man
ſhall be prejudiced, ſo that the Matter of
the Action be fully ſhewed in the Declara-
tion, and in the Writ.

Where in the Declaration the Fact ſeemed
to be laid before the Cauſe; yet ſaid, That
if the Declaration was after, it ſhould be
right. *Mod. Caſ.* 33.

If the firſt Declaration will help the ſe-
cond. *Ibid.* 129.

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Default.

Default.

Default of Appearance, and Defaults after Appearance, and concerning Judgments thereupon, *vide* 2 D'Anv. Gen. Abr. 465, 466, &c.

Of Departure in Despite of the Court, and of a *Retraxit*, *idem* 471.

Demurrer.

Vide ante Tit. Amendment, pag. 38, &c. where by Statute 4 & 5 Ann. cap. 16. Causes of Demurrer are to be specially set down, &c.

See also a late Treatise, entituled, *The Doctrine of Demurrers*.

See concerning Defaults after Issue in Real and Personal Actions, and the Consequence: Also where Judgment shall be upon the Demurrer, or the Default; and as to the Diversity of Defaults of the Defendant, or the Plaintiffs, &c. *vide Modern Cases* 4, 5, 6, 7, 9.

Deceit, or Disceit.

Acting in
Disceit of
the Court.

By *West. 1. 29. 3 Ed. 1.* If any Person do act or consent to any Thing in Deceit of the Court or Party, and thereof be attainted, he shall suffer a Year and a Day's Imprisonment at least; and if he be a Pleader, he shall be also expelled the Court; and if they shall deserve greater Punishment, it shall be at the King's Pleasure.

Officers,

Officers, Criers of Fee, and Marshals of Fees of Off.
Justices in Eyre, shall not take Money other- cers.
wise than they ought to do, in Pain to pay
the Treble thereof to the Complainants:

By Statute 2 Ed. 3. 17. A Writ of Deceit Writ of De-
shall be maintainable as well in case of Gar- ceit.
nishment touching a Plea of Land, as in case
of Summons in Plea of Land.

See much more concerning this Particu-
lar in 2 D'Anv. Gen. Abr. 543, &c.

Devise. (Vide Wills.)

Who may make Devises by Statute Law,
by Common Law, or by Custom, and to
whom, see much Doctrine concerning this
Particular in 2 D'Anvers's Gen. Abr. from 512,
to 543.

Also see, as to a Devise of all the Rest and
Residue of an Estate; and that the Word
Estate will pass a Freehold as well as a Chat-
tel. Mod. Cas. 106, 107, &c.

Discent.

Concerning Discent of Estates in many
Respects, vide 2 D'Anvers's Gen. Abr. from 548,
to 568.

Disclaimer.

Concerning Disclaiming of Estates, &c.
in Actions, vide 2 D'Anv. Gen. Abr. 568, &c.

Discontinuance.

Concerning Discontinuing Estates, &c.
vide 2 D'Anvers's Gen. Abr. 571, 572, &c.

Dismes.

See after *Tythes*, and *vide 2 D'Anv. Abr. 982, &c.*

Disseisin.

For Disseisin of Rent and Lands, *vide 2 D'Anv. Abr. from 622, to 632.*

Distress.

Vide ante Avowry, and see *2 D'Anv. Gen. Abr. from 633, to 652. and Mod. Cas. 200, 214, 215, &c.*

Dower. (*Vide Jointures.*)

Damages
from what
Time.

BY *Merton* 1. 20 *H. 3.* A Woman deforced of her Dower or *Quarentine*, in a Writ of Dower shall recover Damages, *viz.* the Value of her Dower from her Husband's Death to the Day of the Recovery of her Dower, and the Deforceor shall be amerced.

Dower unde
nihil habet.

By *Westm. 2. 48. 3 Ed. 1.* In a Writ of Dower (*unde nihil habet*) the Writ shall not abate by the Exception of the Tenant, that she hath received her Dower of another before the Writ purchased, unless he can shew that

that she received Part of her Dower of himself, and in the same Town before the Writ purchased.

By *Westm. 2. 4. 13 Ed. 1.* The Wife shall be endowable as well where Land was recovered against her Husband by Default, as by Covin; so that albeit the Land was lost by the Husband's Default, yet that shall be no good Allegation for the Tenant; but he must then proceed and shew his Right, otherwise the Wife shall recover.

Of what Lands the Wife is endowable.

When Tenant in Dower, in Frank-marriage, by the Courtesy, for Life or in Tail, lose their Land by Default, and the Tenant is compelled to shew his Right, they may vouch the Reversioner, if they have Warranty; and then the Plea shall pass betwixt the Tenant and the Warranter, according to the Tenor of the Writ, by which the Tenant recovered by Default; and so from many Actions they shall resort to one Judgment, viz. that the Demandants shall recover that Demand, and the Tenants shall go quit.

Where Tenants may vouch.

Here, if the Action of such a Tenant, which is compellable to shew his Right, be moved by a Writ of Right, albeit the great Affize or Battel cannot be joined by Words accustomed, yet shall it in that Case be joined by Words convenient.

The Affize joined.

If the Wife be wrongfully endowed by the Guardian, during the Minority of the Heir, he (at full Age) shall be righted; yet shall the Wife retain her just Dower, if she make her Title good.

Heir reliev'd.

Quod ei deforce? By this Statute, in Place of a Writ of Right, a *Quod ei deforceat* is given to Tenant in Dower in Free-marriage, by the Courtesy for Life, and in Tail, upon losing by Default.

Dower notwithstanding Attaint.

By Statute 1 Ed. 6. 12. The Wife shall be endowed albeit her Husband were attainted, convicted or outlawed for Treason or Felony, saving the Right of others.

But note, This Clause is altered for Treason by 5 Ed. 6. 12. which see in *Treason*.

[See many Cases, Pleadings, and Resolutions in this Particular of Dower, in 2 D'Anv. Gen. Abr. from 652, to 681.]

Droit de Reito; or, Writ of Right.

(*Vide* 2 D'Anvers's Gen. Abr. 682, &c.)

Duress of Imprisonment.

Obligations void.

By Statute 1 R. 2. 13. All Obligations forced by Duress upon Ecclesiastical Judges and others, whereby they are restrained from suing for Tythes, and other Duties in the Ecclesiastical Court, shall be void.

Such as falsely procure such Judges, or others, to be indicted, shall incur such Punishment as by *Westm.* 2. 12. is ordained for false Appeals; which see in *Appeals*.

[See more of Duress in 2 D'Anv. Gen. Abr. 685, &c.]

Dur-

Durham.

BY Statute 5 *Eliz.* 27. Fines levied before the Justices of the County Palatine of *Durham* (or one of them) of Lands lying in the same County, shall be good. As to Fines levied there.

By Statute 31 *Eliz.* 2. 9. Writs upon Proclamations and Exigents against any Person dwelling within the County Palatine of *Durham*, shall be directed to the Bishop of *Durham*, &c. with divers other Provisions for that County Palatine: For which see the Statute at large. Proclamations, &c.

[*Vide postea* Fines.]

Duties relating to Stamp'd Vellum, Parchment and Paper.

Since we have before examined something of Stamp'd Indentures at the End of *Bargains and Sales* relating to Clerks, &c. it may therefore be now proper to look into the several Acts relating to the Stamp Duties; which to know, all Conveyancers, Attornies, Clerks, Writers of Deeds, and other written Instruments, are greatly concern'd.

The first Act thereof was made 5 & 6 *W. & M.* cap. 21. wherein the Duties run single.

Which Act is explained by 6 & 7 *W. & M.* cap. 12. as follows :

Z 4

By

5 & 6 W. & M.
explained.

By Statute 6 & 7 W. 3. cap. 12. For explaining and regulating the Doubts and Difficulties in the late Act 5 & 6 W. & M. c. 21. *For several Duties upon Vellum, Parchment and Paper*, that the said Act shall not be construed to charge any Warrant made by, or Recognizance taken before, any Justice of Peace, or any Surrender of any Copyhold Estate, or Copies of such Estate, or any Certificate of Marriage, of the Widow of a Seaman, or Proceedings in any Court-Marshal relating to the Trial of Common Soldiers, or any Orders, Decrees or Proceedings before Commissioners of Sewers, or in the Court of Stannaries.

Savings out
of the former
A&.

Forty Shillings charged by the former Act upon Registering Degrees in the Universities, shall not extend to the Degree of Batchelor of Arts.

The Duty of 40 s. laid by the said Act upon Letters-Patents, shall not extend to Commissions of Rebellion in Process.

The like Duty laid upon Admittances of Officers, shall not extend to charge any Annual Officer in Corporations, or Inferiour Courts, whose Office is under the Value of 10 l. *per Annum*.

Sea Officers shall pay the same Duty as Land Officers, and no more.

500 l. made
5 l.

The Penalty of 500 l. mentioned in the said Act, is hereby changed into the Penalty of 5 l. only, and those who have incurred the Penalty of 500 l. are by this Act pardoned and discharged from the said Forfeiture.

The

The Lord Treasurer, or Commissioners of the Treasury, shall once a Year at least set the Prices of Stamp'd Paper and Parchment, &c.

Double Duties.

BY Statute 9 & 10 W. 3. cap. 25. After the First of *August* 1698. there shall be paid to His Majesty, His Heirs and Successors, for ever, over and above all other Duties, the Sums following, viz. For every Skin or Piece of Vellom or Parchment, or Sheet or Piece of Paper, on which there shall be ingrossed or written,

To be paid for ever, over and above other Duties.

Any Grant under the Great Seal or Dutchy of *Lancaster*, of any Honour, Dignity, Promotion, Franchise, Liberty or Privilege, or Exemplification of the same (except Commissions of Rebellion in Process) Forty Shillings.

Grants, &c. under the Great Seal.

Any Pardon (except the General Circuits and *Newgate* Pardon) Warrant of Reprieve, Relaxation from Fines, Corporal Punishments or Forfeitures, Forty Shillings.

Pardons.

Any Grant of Money above One hundred Pounds, under the Great or Privy Seal only, any Grant of Office or Employment above Fifty Pounds *per Annum*, any Grant of Lands in Fee, or Leases for Years, or other Grant of Profit under the Great Seal, *Exchequer*, Dutchy of *Lancaster*, or Privy Seal only, Forty Shillings each.

Grants under Privy Seal.

Any

Presentations, &c.

Any Presentation or Donation, Collation, Dignity, or Spiritual or Ecclesiastical Promotion of Ten Pounds *per Annum*, or above, in the King's Books, Forty Shillings.

Dispensations.

Any Dispensation for two Ecclesiastical Dignities or Benefices, or other Dispensation or Faculty, Forty Shillings.

Admittances of Physicians, Attornies, &c.

Any Admittance of a Fellow of the College of Physicians, or of any Attorney, Clerk, Advocate, Proctor, Notary, or other Officer in any Court, Forty Shillings.

Exception.

But not to extend to any Annual Officer in a Corporation or Inferiour Court, whose Office is under Ten Pounds *per Annum* in the whole.

Appeals.

Any Appeal from the Court of Admiralty, Arches or Prerogative of *Canterbury* or *York*, Forty Shillings.

Exemplifications.

Any Exemplification under the Seal of any Court, Five Shillings.

Decrees, &c.

Any Decree or Dismission in *Chancery*, *Exchequer*, Dutchy of *Lancaster*, Palatine of *Chester*, *Durham*, or other Court of Equity, Six Pence. 2.

Institutions, &c.

Any Institution or Licence under the Seal of any Archbishop, Bishop, Chancellor, Ordinary, or Ecclesiastical Court, Five Shillings.

Writs of Error, &c.

Any Writ of Error, *Certiorari*, or Appeal, (except to the Delegates) Five Shillings.

Significavit.

Any *Significavit pro Corp' deliberat'*, Five Shillings.

Admiralty.

Any Sentence, Attachment or Relaxation in the Admiralty or Cinque-Ports, Five Shillings.

Any

- Any Letter of Mart, Five Shillings. Mart.
- Any Probate of a Will, or Administra- Probate.
tion, above Twenty Pounds Value, Five
Shillings.
- Any Recognizance, Statute-Staple, or Recogni-
Statute-Merchant, Five Shillings. zance, &c.
- Any Record of *Nisi prius*, or *Postea*, Two *Nisi prius*.
Shillings Six Pence.
- Any Judgment signed by any Officer of Judgment.
the Courts at *Westminster*, Two Shillings Six
Pence.
- Any Commission out of Ecclesiastical Commissions.
Courts, Two Shillings Six Pence.
- Any Warrant, Monition, or Personal De- Warrants
cree in the Courts of Admiralty or Cinque- and Moni-
Ports, or Beneficial Warrant or Order, un- tions, &c.
der the Sign Manual, (except for the Navy,
Army and Ordnance) Two Shillings Six
Pence.
- Any Special Bail or Appearance, One Bail Special.
Shilling.
- Any Bill, Answer, Replication, Rejoin- Bill and An-
der, Interrogatories, Depositions, or other swer, &c.
Pleadings in *Chancery*, *Exchequer*, Dutchy
and Palatine Courts, and other Courts of
Equity, One Shilling.
- Any Admission into a Corporation or Admissions.
Company, the Universities, Inns of Court
and *Chancery*, One Shilling.
- Any Affidavit (except for burying in Affidavits.
Woollen, or before the Officers of the Cu-
stoms, Justices of Peace, or Commissioners
for Taxes, *ex Officio*) Six Pence.
- Any Copy of such Affidavit, Six Copies.
Pence.

Any

Indentures,
&c.

Any Indenture, Lease or Deed-Poll, (except for binding poor Parish-Children Apprentices) Six Pence.

Original
 Writs, *&c.*

Any Original Writ (except where *Capias* issues) *Subpœna*, Bill of *Middlesex*, *Latitat*, Writ of *Capias*, *Quo minus*, *Ded. potestatem*, and other Writs, Processes or Mandates, where the Debt, Damage or Demand is of Forty Shillings, or above, (except for levying Fines, suffering Common Recoveries, and *Habeas Corpus* Writs) Six Pence.

Upon entering
 Actions.

Any Entry of Actions in *London*, and other Corporations and Courts, of Forty Shillings, or above, Six Pence.

Bail Common,
&c.

Any Common Bail and Appearance, Six Pence; which is to be entred or filed in eight Days after the Process is returnable, on Penalty of Five Pounds to the Plaintiff.

Rule or Order.

Any Rule or Order of Court at *Westminster*, Six Pence.

Copies.

Any Copy of such Rules or Orders, or other Records or Proceedings, Six Pence.

Citations.

Any Citation, Monition, Libel, Allegation, Deposition, Answer, Sentence, final Decree or Inventory in Ecclesiastical Courts, Admiralty or Cinque-Ports, or Copies thereof, Six Pence.

Charter-Parties,
 Bonds,
&c.

Any Charter-Party, Policy of Assurance, Passport, Bond, Release, Contract, Obligatory Instrument, Protest, Procuration, Letter of Attorney, or other Notarial Act, Six Pence.

Declarations,
&c.

Any Declaration, Plea, Replication, Rejoinder, Demurrer, or other Pleadings in Courts

Courts of Law, One Penny; and Copies thereof, One Penny [*per Sheet.*]

Any Depositions, (except the Draughts Depositions, thereof before they are engrossed) Copies &c. of Bills, Answers, Pleas, Demurrers, Replications, Rejoinders, Interrogatories, Depositions, or other Proceedings in Courts of Equity, and Copies of Wills, One Penny.

After the First of *August* 1698. every Officer or Clerk in the Courts at *Westminster*, shall set down the Day and Year of his signing any Writ of Arrest upon such Writ, and duly enter the same, on Penalty of Ten Pounds.

Day of signing Writs.

This Act shall not extend to Bills of Exchange, Accompts, Bills of Parcel, Bills of Fees, or Bills or Notes, not sealed, for Payment of Money at Sight or Demand, or at the End of certain Days of Payment.

Exceptions out of this Act.

Nor to the Probate of Wills, or Letters of Administration of Common Seamen or Soldiers, dying in the King's Service, a Certificate thereof being produced, and Oath thereupon made before the proper Judge.

Seamen's Wills.

Nor to any Warrant or Recognizance before a Justice of Peace, or the Surrender of any Copyhold Estate, or Copies of such Estate, or Court-Martial Proceedings for Trial of a Common Soldier, or Proceedings before Commissioners of Sewers, or in the Court of Stannaries.

Justices Warrants, &c.

Sea Officers shall pay the same Stamp'd Sea Officers. Duty, as Land Officers pay by this Act only.

The

Redemption.

The Duties by this Act granted, shall be liable to such Redemption by Parliament as shall be declared this Session.

Commissioners, and their Office.

The King, or Commissioners of the Treasury, shall appoint Commissioners for managing these Duties, who shall keep their Head Office in *London* or *Westminster*, for stamping of Vellom, &c. and collecting the Duties, and providing proper Marks or Stamps accordingly.

Duties, how to be applied.

For applying the Duties on this and the former Acts, as they are severally appropriated, all Vellom, Parchment and Paper, where the Duties are doubled, till the First of *August* 1706. shall after the First of *August* 1698. be stamp'd with two Marks, to denote both the Duties, except such Things as by the former Acts still remain liable to the single Duty only, namely every Skin, &c. on which there shall be ingrossed or written,

Newgate-Pardon.

Any General Circuit or *Newgate-Pardon*, Forty Shillings only.

Certificates of Degrees, &c.

Any Register, Entry, Testimonial or Certificate of Degrees, in the Universities or Inns of Court, (Batchelor of Arts excepted) Forty Shillings only.

Conveyances of Grants.

Any Conveyance, Surrender of Grants or Offices, Release, or other Deed inrolled, Five Shillings only.

Marriage Licence.

Any Licence or Certificate for Marriage, Five Shillings only.

Writs for Fines.

Any Writ for levying Fines, or suffering Recoveries, or *Habeas Corpus*, Five Shillings only.

All which, till the First of *August* 1706. One Mark.
shall be stamp'd with one Mark only, according to the former Acts.

All Things herein before charged, shall after the last of *July* 1706. before the en-
grossing or writing thereof, be brought to the Head Office to be stamp'd with one Mark. An Additional Stamp.

The Commissioners for the said Duties are impowred and required to stamp any Quantities of Vellom, &c. for any Persons paying the Duties : And if any Person engross or write any Thing, as aforesaid, before it be so stamp'd, or stamp with a lower Duty than is payable by this and the former Acts, he shall forfeit Ten Pounds : And any Clerk, Officer, or Person in publick Office, who shall make, engross or write any Records, Deeds, Instruments or Writings, charged as aforesaid, without being stamp'd, or with a counterfeit Stamp, or stamp'd with a lower Duty, shall besides the Ten Pounds, forfeit his Office ; and if an Attorney, he shall be disabled to practise ; and any other Person offending therein, shall forfeit for every such Deed or Writing, Ten Pounds, over and above the Duty : And no such Record, &c. shall be pleaded or given in Evidence, till the Duty and Penalty be paid, and then to be stamp'd with the proper Marks. Forfeitures of Officers and Writers, &c.

Any Person who shall counterfeit any of the said Stamps or Marks, or the Impression of the same, or shall vend any Vellom, &c. with such counterfeit Marks, shall be guilty of Felony for counterfeiting.

of Felony, without Benefit of Clergy, and suffer Death accordingly.

Duties to be secured.

The Commissioners may appoint a Person in any Court to take Notice of the Things stamp'd; and the Judges of Courts shall make such Orders for securing the Duties, as the Commissioners shall reasonably desire.

Oaths to be taken.

Every of the Commissioners, and Persons employed under them for stamping of Vellom, &c. shall take the Oath prescribed for the faithful Execution of their Trust, &c.

Sufficient to be stamp'd.

The Commissioners, and their Officers, shall observe the Directions of the Commissioners of the Treasury, and shall take Care that the several Parts of the Kingdom be sufficiently furnished with stamp'd Vellom, &c. That all Persons at their Election may buy the same at the usual Rates above the Duty.

Forma pauperis.

Persons admitted to sue or defend in *Forma pauperis*, shall not be liable to the said Duties.

Usual Writing.

All Things whatsoever hereby charged shall be engrossed and written as usually.

Upon altering the Stamps.

Upon altering or renewing the said Stamps, all Things stamp'd and not written may within sixty Days after Proclamation of such renewing or altering be sent to the Head Office to be changed, without any further Charge, on the Penalty of One hundred Pounds; but not being so sent, to be void, and subject to the like Penalties, if engrossed or written upon, as if not stamp'd.

Provided,

Provided, That the King, or Commissio-
ners of the Treasury, may on stamp'd Parch-
ment or Paper order Payment of the Sala-
ries, and incident Charges in managing this
Duty, out of the said Duties.

Proviso

Provided, That within twenty Days after
Alteration of the said Stamps, the Procla-
mation aforesaid shall be sent to the Chief
Magistrates of Cities, Boroughs and Mar-
ket-Towns throughout England, to be pub-
lished the next Market-day, or Sunday, on
Penalty of Two hundred Pounds.

Proclama-
tion of the
Alteration.

The Commissioners of the Treasury shall
once every Year, set the Prices that all
stamp'd Vellom, Parchment or Paper, shall
be sold at, which shall be stamp'd upon the
same accordingly; and an Allowance shall
be made for every ten Pounds, after Six per
Cent. per Annum, for three Months, for prompt
Payment, over and above the like Allow-
ance on the former Acts.

Prices to be
set.

This Act shall not extend to charge any
Letters Patents for collecting any charitable
Briefs, nor shall such Briefs be doubly
stamp'd.

Charitable
Briefs.

By an Act made Anno nono Annae Reginae,
New Duties on stamp'd Vellom, &c. for 32 New Duties.
Years, from the First of August 1711. shall
be as followeth, viz.

For Certificates for Drawbacks on re- Certificates.
shipping or exporting Goods, 8 d.
For Bills of Lading, 4 d. Bills.
For Sheet Almanacks, 1 d. Almanacks.
For other Almanacks, 2 d.

A a

Where

Almanacks.

Where Almanacks are made to serve for several Years, then the said Rates shall be paid for every such Year.

Licences.

For Licences for Retailing Wine, 4 s.

For Licences for Selling Ale, 1 s.

The Commissioners of the Stamps are to manage these Duties, and to cause new Stamps to be provided to denote the Duties.

Vellom.

Vellom, &c. shall be stamp'd before written on, &c.

Almanacks.

Where any Almanack shall contain more than one Sheet, it shall be sufficient to stamp only one Sheet.

Upon altering Stamps, Paper may be changed.

Upon altering Stamps, those who have Paper, &c. marked by them, may have it changed in 60 Days after such Intention of altering shall be published by Proclamation, on Forfeiture of 100 l. and such Paper, &c. not brought in within the Time, shall be of no other Effect than if it had never been stamp'd; and all Persons writing thereon any Matters hereby charged, shall forfeit as if the Paper, &c. had not been stamped.

Proclamations.

The Proclamations for altering Stamps shall be sent to the Mayors, &c. of every Corporation, who shall publish the same on the next Market-day, or next Sunday in the Church, on Forfeiture of 200 l.

Counterfeiting Stamps, &c.

Any Person counterfeiting any Stamp, &c. or vending any Vellom, &c. with such Counterfeit Stamp, knowing it to be so, or fraudulently using any Stamp provided in pursuance of this Act, &c. shall be adjudged a Felon without Benefit of Clergy.

Com.

Commissioners are to take Care that all Places be sufficiently furnished with stamp'd Vellom, &c.

The Treasury shall annually set the Price on stamp'd Vellom, &c. that it shall be sold at, and the Commissioners shall stamp the Prices upon every Piece of Vellom, &c. by them to be sold, and allow 6 l. per Cent. for six Months for every 10 l. Value.

All Penalties shall be one Moiety to Her Majesty, the other to the Informer.

The Commissioners shall deliver to the Persons for whom any Almanacks are to be printed, Paper stamp'd for Printing such Almanacks, upon Security to pay the Duties in three Months; and on bringing to them any Number of the Copies of such Almanacks in three Months, and Request to them made, they shall cancel all the Stamps on such Copies, and abate so much of the Money due upon their Security as such cancelled Stamps shall amount to.

By another late Statute, 'tis enacted, That from the First of August 1712. for 32 Years, there shall be raised for the Things which shall be engrossed, printed or written, the Rates following, viz. .

For every Surrender of, or Admittance to Copyhold Land, &c. in England, &c. or Copy of Court Roll, &c. (except the Original Surrender to the Use of a Will, and the Court Roll wherein Proceedings are entered) 2 s. 3 d.

A a 2

For

Other Surrenders of Messuages, &c.

For every Principal or Original Instrument of Surrender of any Messuages, &c. and other heretable Rights, to be made to any of Her Majesty's Subjects, who are the Superiours thereof, or to any City, &c. in Scotland, 2 s. 3 d.

Charters of Resignation.

For every Charter or Resignation, Confirmation, *Novodamus* or Charter upon apprising, or Adjudication made by any Superiors or others, in Scotland, 2 s. 3 d.

Retour of Service.

For every principal or original Retour of Service of Heirs, or Precept of *Clare Constab*, &c. 2 s. 3 d.

Heretable Bond, &c.

For every principal or original Saifme taken upon a Mortgage, Wadset, heretable Bond, &c. 2 s. 3 d.

Of Houses, &c. holden in Burgage.

For every principal or original Instrument of Surrender, &c. of any Houses, &c. holding Burgage, &c. 2 s. 3 d.

Transfer.

And for every Transfer of Stock in any Company, &c. 2 s. 3 d.

Pamphlets.

And for every Half-sheet Pamphlet One Half-peny; and for every Whole-sheet One Penny, for every printed Copy.

For every Pamphlet larger than One Sheet, not exceeding Six Sheets in *Octavo*, or Twelve Sheets in *Quarto*, or Twenty Sheets in *Folio*, 2 s. for every Sheet contained in One printed Copy thereof.

Advertisement.

For every Advertisment in the *London-Gazette*, &c. 12 d.

Exception.

But this Act shall not charge Acts of Parliament, Proclamations, Orders of Council, Forms of Prayer, or Acts of State ordered by Her Majesty to be printed; or the Votes or Matters of either House of Parliament;

or School-Books, or Books of Devotion or Piety, or any single Advertisement printed by it self; or the Daily Accounts or Bills of Goods imported, or the Weekly Bills of Mortality; so as such Bills contain no other Matters than what are usually comprized therein.

The Commissioners of the Stamps shall **New Stamps.** manage these Duties, who are to employ Officers under them for that Purpose, and to provide new Stamps to denote the Duties.

All Vellom, &c. shall, before engrossing, **Vellom.** be brought to the Head Office to be stamped.

If any Person shall, after the First of **Forfeiture for** **August 1712.** write, engross or print, or sign writing or selling before stamping. any of the said Matters, or sell any Pamphlet, before Stamping, he shall forfeit 10 l. with Costs of Suit: And any Steward, &c. offending, shall (besides the said Forfeiture) lose his Office: And if any the said Matters shall be engrossed, &c. on Vellom, &c. not stamp'd, it shall not be available in Law, till 5 l. be paid to the Queen, and the Thing be stamp'd.

Upon altering or renewing the said **Upon alter-** stamps, all Things stamp'd and not written ing Stamps. upon, may, within 60 Days after Proclamation, be sent to the Head Office, or to such Officers as shall be appointed, to be changed, without Charge, on Penalty of 100 l. but if not sent, it shall be of no Effect or Use, and subject to the like Penalties, if engrossed or written on, as if not stamp'd.

Proclamation.

Within thirty Days after altering the Stamps, the said Proclamation shall be sent to the Mayor of every City, &c. to be published the next Market-day, or *Sunday*, on Penalty of 200 *l*.

Copies of Pamphlets to be brought to the Office.

A printed Copy of every Pamphlet above one Sheet, published within the Limits of the Weekly Bills, shall be brought to the Stamp-Office within six Days after Printing; and the Title, with the Number of Sheets, and the Duty, shall be registred in a Book for that Purpose; and the Duty shall be thereupon paid to the Receiver who shall give a Receipt on such printed Copy, or the same shall be stamped to denote the Payment: But if it shall be printed elsewhere, then the Copy shall be brought to some Head Collector of the Stamp-Duties within 14 Days after the Printing, who is to register the Title, with the Number of Sheets, and the Duty, and give a Receipt on the printed Copy.

If the Duty be not paid.

If the Duty be not paid, &c. then the Author, Printer, &c. shall lose all Property therein, though the Title were registred in the *Stationers Book*, so as any Person may freely print the same paying the Duty. And the Printer and Publisher shall forfeit 20 *l*.

Printer's Name, &c.

All Pamphlets shall have the Printer's or Publisher's Name printed thereon, on Penalty of 20 *l*.

Unfold Copies to be cancelled.

All the Stamps on the Copies of News Papers or Pamphlets, as shall be really unfolded, may be cancelled by the Commissioners, or their Head Officers, on Oath that such

such Copies have not been fraudulently returned, &c. and the like Number of other Sheets, &c. stamped *gratis*, shall be changed for them.

Any Person who shall counterfeit the said Stamps, or the Impression of the same, or shall vend any Vellom, &c. with such counterfeit Stamps, knowing such Stamps to be Counterfeit, or shall use such Stamps, shall be guilty of Felony, and suffer Death accordingly.

Felony for counterfeiting Stamps.

The Treasury shall once in a Year set the Prices that all stamp'd Vellom, &c. shall be sold at; and an Allowance shall be made for every 10 l. after 6 per Cent. per Annum, for three Months, for prompt Payment.

Prices set, and Allowance made.

The Duty on Advertisements shall be paid within 30 Days after publishing, on Forfeiture of treble the Duties.

Advertisements.

All Pecuniary Penalties relating to the Stamps on Vellom, &c. shall be one Moiety to the Queen, the other to the Informer.

Pecuniary Penalties.

Any two Justices may hear and determine the Offences of Printing or Selling Pamphlets, &c. not stamped within 3 Months after the Offence; and levy the pecuniary Penalties by Distress: But Persons aggrieved may appeal to the Quarter-Sessions, whose Determination shall be final.

To be levied by Distress.

The Justices may mitigate Penalties, allowing the Officers Costs, so as not to reduce the Penalty to less than One 4th Part thereof.

Penalties mitigated.

Brokers shall not take above 2 s. 9 d. for soliciting Contracts, on Forfeiture of 20 l.

Brokers.

A a 4

Every

Oath.

Every Commissioner, and Subordinate Officer, (except the Commissioners, and Officers of the Customs) shall be sworn.

General Issue.

Persons sued may plead the General Issue, &c.

So many Commissioners, &c. shall be appointed as shall be necessary for managing the several Duties herein, who shall be subject to the Act 9 W. 3.

Certiorari.

No Writ of Certiorari shall supersede Execution, or other Proceedings, upon any Order made by the Justices in pursuance of this Act.

Almanacks.

All Books serving chiefly to the Purpose of an Almanack, by whatsoever Name entitled, shall be charged with those Duties by the Act made in the first Session of this Parliament; but not with any of the Duties charged by this Act on Pamphlets.

**Penalty for
marrying
without
Banns or
Licence.**

Every Parson, or other Person in Holy Orders, beneficed or not, who shall marry any Person without Banns or Licence, shall forfeit 100 l. Moiety to the Queen, Moiety to the Informer: And if such Offender be a Prisoner in any Gaol, (except a County-Gaol) and be duly convicted thereof, then on Oath made of such Imprisonment before a Judge, and on producing a Copy of the Record of such Conviction on Oath before the said Judge, he shall grant his Warrant to remove such Offender to the County-Gaol, there to remain charged in Execution with the Penalty inflicted by this Act, and with the Causes of his former Imprisonment:

ment: And every Gaoler permitting such Marriages, shall forfeit 100 l.

Saving to Archbishops, &c. the free Exercise of all Ecclesiastical Jurisdiction, and full Power of inflicting all such Pains and Censures for this and other Crimes, as they might have done if this Act had not been made.

The said Provision for Marriages does not extend to Scotland. Exception.

Dies for Stamping Vellom, &c. though distinguished by several Letters, are and shall be accounted lawful Stamps, according to the several Acts of Parliament in that Behalf. Dies for Stamping.

All Courts of Justice and Judges ought judicially to take Notice of the Proclamation of King *William* and Queen *Mary* about the Stamps, and of the Types, Marks and Stamps thereby published, and which shall hereafter be published by any Proclamation, in pursuance of any Acts of Parliament relating to the Stamp-Duties. Courts of Justice are to take Notice.

The Commissioners for those Duties may keep their Head Office in any the Four Inns of Court, or in the Parishes of *St. Andrew Holbourn*, *St. Clement Daves*, *St. Paul Covent-Garden*, or *St. Giles in the Fields*, although the same be not within *London* or *Westminster*. Commissioners Office.

No Commissioner, or Officer concerned in managing any of the Duties granted by this Act, shall perswade any Elector to give, or dissuade any Elector from giving, his Vote. Commissioners not to intermeddle with Electors Votes, &c.

Vote for his Choice of any Person to be a Knight of a Shire, Commissioner, Citizen, &c. for any County, City, &c. on Forfeiture of 100 *l.* and to be incapable of ever bearing any Office or Place of Trust under Her Majesty.

E.

Ejectment.

Ejectment to recover Possession of Lands.

THIS is now become the Common Action wherein the Titles of Land are tried; and it lies to recover a Possession of Lands, &c. which is illegally kept from the right Owner: And in this Action he recovers Possession.

Of the old and new Practice.

Concerning the old Practice, and the new Practice therein, several Books treat thereof, as *Compleat Attorney, Law of Ejectments, 1 Instruct' Cleric, Stiles Pract. Regist.* last pub. 242, &c. 1 *Lill. Regist.* 376, &c. 2 Vol. *D'Anvers's Gen. Abr.* 751, 752, &c.

Costs for Defendant upon Acquittal, unless, &c.

See before 51. concerning Defendants acquitted in *Trespass, Ejectment, &c.* to recover Costs, unless the Judge shall immediately after the Trial, in open Court, certify upon the Record that there was a reasonable Cause for making such Person or Persons

sons a Defendant or Defendants to such Action.

That where a Man is made Plaintiff in Ejectment without his Knowledge, and a Nonsuit is had, and Execution sued out, he shall be discharged upon Oath. *Lill. Reg.* 378.

A feign'd Plaintiff discharged.

That the Court will not suffer the Plaintiff to amend his Declaration in Ejectment after Delivery, and before Plea pleaded. *Idem* 377.

No mending a Declaration in Ejectment.

What the Plaintiff is to do, and what the Lessor, if either of them bring an Action for the mean Profits. *Idem* 378.

Action for mean Profits.

Per Cur', If one pretending Title to the Land, give Security to the Tenants to save them harmless, upon paying him the Rent; and after, another recover in Ejectment against them, they have not yet a Remedy upon the Security till Recovery of the mean Profits, which is from the Time of the Action brought; and without an actual Entry, there can be no Recovery of the Profits. *Mod. Cases* 222.

Where one gives Security to save the Tenants harmless, &c.

Where the Court stay'd the Cause upon Payment of the Rent and Costs, *Lill. Reg.* 379. and also ordered a new Lease to be executed at the Defendant's Costs.

Several Demises in one Narr'.

That several Demises may be laid in one Declaration, and how. *Ibid.*

Election.

Election.

Election. Concerning Election to do or have this or that, &c. *vide 2d Vol. D'Anvers's Gen. Abr. 759, &c.*

Emblements.

Emblements. Concerning Emblements, and who shall have them, 2 *D'Anv. Abr. 763.*

Widows. That by Statute of *Merton*, 20 *Hen. 3.* enacted, *Quod Viduæ possint legare blada sua tam de Dotibus, quam de aliis Terris suis.* *Idem D'Anv. 766.*

Incumbent. And by 28 *H. 8. c. 11. Par. 6.* it is enacted, That an Incumbent having sown his Glebe, may by Will dispose thereof. *Idem D'Anv. 767.*

Infants.

Acts of Infants. Concerning the Acts of Infants, what are void, and what voidable, &c. and what shall bind them, &c. *vide 2 D'Anv. Abr. 767, &c. Tit. Infants.*

Enterpleader and Garnishment, &c.

Concerning these, *vide 2 D'Anv. Abr. 777, &c.*

Entrep.

Entry.

Of Entry into Lands, &c. for himself, or Into Lands.
to the Use of another, 2 D'Ano. Abr. 785,
786, &c.

See before 41, 4 & 5 *Annæ Reginae*.

That no Claim or Entry shall avoid any If to avoid
Fine with Proclamations in the Common- a Fine.
Pleas, Counties Palatine or *Wales*, or shall be
a sufficient Claim or Entry within 21 *Jac. 1.*
cap. 16. for Limitation of Actions, unless an
Action be commenced in one Year after
such Entry or Claim, and prosecuted with
Effect.

That the Grantee of a Reversion may
enter for a Condition broken, and take the
Benefit of 32 *H. 8. cap. 34. Plowd. 176, &c.*

Errors.

Vide ante Amendments, as to Writs of
Error, 30, 51, 55, 57, 58, &c.

See also 1 *Lill. Reg. 418, &c.*

Costs given to Defendant upon a Verdict Costs.
on a Trial of Errors in Fact, *idem* 425. up-
on Stat. 3 *H. 7. cap. 10.*

Where Defendant shall not have Costs No Costs.
upon a Verdict of Errors in Fact. *Ibid.*

If there be Error in the Awarding of an Error in
Execution, the Execution only, and not the Process.
Judgment, shall be reversed. *Hob. 90.*

Where

Nolle prosequi,
and Execu-
tion.

Where and how a *Nolle prosequi* may be entered upon a Writ of Error out of the *Common-Pleas*, and Execution may be sued out, though a *Supersedeas* be lodged in the Sheriff's Office. 1 *Lill. Reg.* 426.

Repleader
denied.

That denying a Repleader when it ought to be, is Error. *Mod. Caf.* 292.

Twobrought
Error, made
2 Attornies,
&c.

Where two brought Error, and made two Attornies; One Attorney assigned Error to Issue, and then the other would plead in Abatement. *Per Cur'*, If he had made Default, he should be severed, but we can't help him; let him take his Remedy against the Attorney who assign'd for both. *Id.* 40.

Two Writs
of Error of
the same Re-
turn.

Judgment was affirm'd in Error, because another Writ of Error of the same *Teste* and Return was before brought and return'd. *Idem* 61.

Original.

Upon Error for Want of an Original, and Release of Errors pleaded, &c. *Idem* 113, 174, 206, 235.

Errors in
Fact, &c.

Difference between Errors in Law and Errors in Fact, where and when. *Id.* 207.

Exception
to Bail.

Time to except against Bail put in upon a Writ of Error. *Idem* 230.

Where Writ
of Error no
Supersedeas.

Writ of Error no *Supersedeas* till Notice to the Plaintiff's Attorney; and said, that the Allowance thereof was sufficient Notice, or that actual Notice be before Allowance. *Idem* 130.

Action mis-
taken in the
Writ.

Error of Judgment was brought in Trespas, whereas it was in Case, held a great Diversity; but if right Instructions were given to the Officer, the Court would amend it upon Affidavit. *Idem* 138.

And

And *per Cur'*, The Defendant can't move Writ quash'd.
to quash the Writ till it be entred on the
roll, and he appear to it, &c. *Ibid.*

Concerning a Writ of Error upon a Judg- Upon a Judg-
ment in *Wales*, and of a *Certiorari* to amend ment in
below, and certify it right up. *Idem* 138. *Wales.*

Effoin.

What an Effoin is, *vide Lutw.* 861. and
Mod. Cases 4, 5, 6, &c.

By *Marlbr.* 13. 52 H. 3. After Issue joined One Effoin or
Dower, *Darrein Presentment*, or *Quare Im-* Default.
pleadit, one Effoin or one Default shall be
only allowed, and if the Party come not at
the Day given, or make Default the second
Day, the Inquest shall be taken, and Judg-
ment given.

If the Inquest be taken in the County
before the Sheriff or Coroners, it shall be
returned before the Justices at a certain
Day; when if the Party appear not, ano-
ther Day shall be assigned by the Justices,
and then shall issue a Command to the She-
riff to cause the Party to come to hear the
Judgment; when if he come not, the Justi-
ces shall proceed to Judgment: In like man-
ner it shall be done, if he come not at the
Day given by the Effoin.

By *Marlbr.* 19. 52 H. 3. In Counties, Hun- Needs no
reds, Courts-Barons, or other Courts, none Oath.
shall need to swear to warrant his Effoin.

By

No Effoin.

By *Westm.* 1. 41. 3 *Ed.* 1. In Affize, At
taints, and *Juris utrum* after Apparence, the
Tenant shall not to be effoined.

Effoin of *ultra*
tra Mare.

By *Westm.* 1. 42. 3. Parceners or Tenants
jointly enfeofed, shall not fouch by Effoin.

By *Westm.* 1. 43. 3 *Ed.* 1. Effoin *ultra Mare*
shall not be allowed, but shall be turned
into a Default, if the Demandant will prove
that the Tenant was within the four Seas the
Day of the Summons, and three Weeks af-
ter. Howbeit, this is only to be done be-
fore Justices.

Baron and
Feme.

By *Glocest.* 10. 6 *Ed.* 1. The Husband and
Wife being impleaded, shall not fouch by
Effoin.

Appellant.

By *Westm.* 1. 2. 13 *Ed.* 1. There shall be
no Effoin for an Appellant.

De malo Lecti.

By *Westm.* 2. 17. 13 *Ed.* 1. In the Circuit
of the Justices, an Effoin *de malo Lecti* lieth
not for Lands in the same County, unless the
Party be sick indeed: For if at the Instance
of the Demandant it be proved by Inquest
that the Tenant is not sick, the Effoin shall
be turned to a Default.

Simile.

Neither shall such an Effoin lie in a Writ
of Right between two claiming by one De-
scendant.

At what
Time.

By *Westm.* 2. 27. 13 *Ed.* 1. An Effoin may
be allowed at the next Day after Inquest
but none at any of the other Days following
nor after Day given *prece partium*.

Simile.

By *Westm.* 2. 28. 13 *Ed.* 1. In Affize after
Apparence, the Demandant shall not be
effoined.

By Statute of *Essoins*, 12 Ed. 2. *Essoins* do not lie in the insuing Cases, where the Land is taken into the King's Hands; where the Party is distrained by his Lands; where any Judgment is given thereupon, if the Jurors come where the Party is seen in the Court; *Essoin ultra Mare* lieth not where the Party hath had before an *Essoin de mal Venir*: It lieth not where the Party hath *essoined* himself another Day; where the Sheriff was commanded to make the Party to appear: *Essoin de servitio Regis* lieth not where the Party is a Woman; it lieth not in a Writ of Dower, or because the Plaintiff hath not found Pledges: It lieth not where such a Man's Attorney was *essoined*; where the Party hath an Attorney in his Suit; where the *Essoiner* confesseth that he is not in the King's Service; where the Summons is not returned, or the Party not attached upon *Non est inventus* returned; where the Party was before *essoined de servitio Regis*, and had not put in his Warrant; where the Party hath been resummoned in *Affize of Mortdancerfor*, or *Darrein Presentment*: It lieth not because such a one is not named in the Writ; nor where the Sheriff hath a Precept to distrain the Party to come, by his Lands and Goods; nor where the Bishop was commanded to cause the Party to appear; nor for that the Day is past.

In what Cases *Essoin* lieth not.

An *Essoin de servitio Regis* is allowed after the *Grand Cape*, *Petit Cape*, and *Distresses* taken upon the Lands and Goods.

De servitio Regis.

B b

By

A Review of all the Statutes,

By Statute *de visu Terræ*, an *Essoin de servitio Regis* lieth not in a Writ of *Novel Disseisin*, *Dower*, *Darrein Presentment*, or *Appeal*.
Vide Rast. Essoin 13.

Estrepement.

Where this Writ lieth.

THIS is a Writ that lieth where one is impleaded by a *Precipe quod reddat*, for Land; there if the Demandant supposes that the Tenant will commit Waste pending the Plea, he shall have this Writ, which is a Prohibition, commanding him that he commit no Waste pending the Plea.

See more of this 5 *Rep.* 115. *b.* *Hob.* 85.

Estoppel.

What it is.

AN Estoppel is where a Person is concluded, and forbidden in Law to speak against his own Act or Deed, altho' it be to say the Truth. See this in 1 *Lill. Reg.* 412.

Executor estopped.

Per Cur', If an Executor suffer Judgment to go against him by Default upon executing a Writ of Inquiry, he shall not give Evidence of Want of Assets, for he is estopped as if it had been the Case of an Heir; for he should have pleaded *Plene Administravit*, or especially what Assets he had. *Mod. Cases* 308.

Interest altered.

That when an Estoppel runs upon the Land, it alters the Interest of it. *Id.* 258.

Vide postea Feme Covert.

Evidence.

Evidence.

BY Stat. -- *Fac.* An Action being brought Upon Action
against a Justice of Peace, Mayor or brought by
Bailiff of a Corporation, Headborough, Officer.
Portreeve, Constable, Tythingman, or Col-
lector of Subsidies or Fifteens, for any Thing
done by reason of their several Offices, both
they and all their Assistants may plead the
General Issue, and yet give the Special Mat-
ter in Evidence. [*Vide ante* 14.]

Here, if the Verdict pass for the Defen- Costs for
dant, or the Plaintiff be nonsuit, or discon- Defendant.
tinue his Suit, the Defendant shall be allow-
ed double Costs, to be recovered as Costs in
other Cases given to the Defendant use to
be recovered.

By Statute 21 *Fac.* 12. The Statute of What Offi-
7 *Fac.* 5. is confirmed; and Church-wardens, cers.
Sworn-men, and Overseers of the Poor, to-
gether with their Assistants, are to be com-
prehended within the Purview of the same
Statute.

An Action brought against any the said Action laid,
Officers, their Deputies or Assistants, shall
be laid in the County where the Fact was
committed, and not elsewhere.

What publick Books, as Corporation- Publick
Books, &c. may be given in Evidence. Books, &c.
1 *Lev.* 25. 1 *Lill. Reg.* 385.

Also Proceedings in the Spiritual Courts; Dead Person.
where the Evidence of a dead Person may
be allowed, and where not. *Idem Lill. Reg.*

Fraud.

Upon general
Issue.

Fraud or no Fraud within the Statute
31 *Eliz. cap. 5.* may be given in Evidence
upon the general Issue. *Ibid.*

And so may many other Things, as by
the several Statutes throughout this Treatise
will appear.

Only one
Witness li-
ving.

How to prove a Deed when all the Wit-
nesses but one are dead, and he cannot be
found. 1 *Lill. Reg.* 387.

Chancery
Order.

Where an Order, or bare Commission of
Chancery, is no Evidence. *Mod. Cas.* 149.

Mandamus.

Evidence of the false Return of a *Manda-
mus* concerning it. *Idem* 152.

Vide Estoppel: *Vide* Feme Covert.

Excommunicato Capiendo.

In Term-
time.

BY Statute 5 *Eliz.* 23. Every Writ *de Ex-
communicato Capiendo* shall be made in
Term-time, and returnable in the *King's-
Bench* the next Term after the *Teste* thereof,
having twenty Days betwixt the *Teste* and
Return.

Returnable
in B. R. &c.

After the Writ shall be sealed, it shall be
forthwith brought into the *King's-Bench*, and
there opened and delivered of Record to the
Sheriff or other Officer, or other Deputies,
to whom the Execution thereof appertains.
And then if the Sheriff, or other Officer, do
not duly execute it, the Justices there shall
amerce him at their Discretion, and estreat
the Amerciament into the *Exchequer*.

Sheriff's
Return.

At the Return of the Writ, the Sheriff,
or, &c. shall not be compelled to bring the
Party arrested in the *King's-Bench*; but only
return

return the Writ, with a short Declaration how it was executed, to the end the Justices may proceed therein according to the Tenor of this Act.

If the Sheriff, or, &c. return a *Non est inventus*, then shall issue out of the *King's Bench* a *Capias*, returnable in Term-time 2 Months (at least) after the *Teste* thereof, with a Proclamation to be made ten Days (at least) before the Return at the County-Court, Assize, Gaol-delivery or Sessions, that the Party shall within six Days after such Proclamation yield his Body to the Gaol, and there remain as a Prisoner, in Pain of 10 *l*. And what shall be done therein and thereupon, shall be returned by the Sheriff, or, &c.

Capias upon a *Non est inventus*.

If upon the Return it appear that the Party hath not rendred himself Prisoner upon the first *Capias*, he shall forfeit 10 *l*. more, to be estreated as aforesaid; and then a 2d *Capias* shall be awarded against him with Proclamation, as before, and a Pain to forfeit 20 *l*. Whereupon if he do not render himself Prisoner, he shall forfeit 20 *l*. to be estreated by the Justices, as aforesaid: And then a third *Capias* shall be awarded, with like Proclamation and Pain; and then a fourth, and so infinitely, until he render himself Prisoner upon the several Returns, whereof he shall forfeit 20 *l*. to be estreated as aforesaid.

A second *Capias*.

Proclamation.

The Party yielding his Body, shall be committed to Prison in like sort, as if he had been taken upon the *Excom. Cap*.

Party imprisoned.

False Return.

If the Sheriff, &c. makes a false Return upon any of the said Writs, he shall forfeit to the Party grieved 40 l.

Saving to the Bishop.

The Bishop's Authority to receive Submission, and deliver the Excommunicate, is saved, according to the former Usage, viz. by a Certificate thereof into the Chancery from the Bishop, and then a Writ from thence to deliver the Prisoner.

Jurisdictions exempt.

In *Wales*, the Counties Palatines of *Lancaster*, *Chester*, *Durham* and *Ely*, and in the Cinque-Ports, (being Jurisdictions exempt where the Queen's Writ runneth not) a *Significavit* (being of Record in Chancery) shall be sent by *Mittimus* to the Justices or Head Officers there, who shall then proceed against the Excommunicate, as the *King's-Bench* is above directed.

Persons saved.

Persons in Prison, beyond Sea, under Age, of *non sane* Memory, or Covert, shall not incur the Penalties aforesaid.

There must be a sufficient Addition, &c.

If in the *Excom. Cap.* the Excommunicate have not a sufficient Addition according to the Statute of 1 H. 5. 5. or if in the *Significavit* it be not contained that the Excommunication proceeds upon some Cause, or Contempt of some original Matter of Heresy, refusing to have his Child baptized, to receive the Sacrament, to come to Divine Service, or Error in Matters of Religion or Doctrine, Incontinency, Usury, Simony, Perjury in the Ecclesiastical Court, or Idolatry, he shall not incur the Penalties aforesaid.

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If the Addition be with a *Nuper* of a Place, the first *Capias* and Proclamations shall issue forth without any Penalty; and in such Case also, if the Party be proclaimed in a County where he is not for the most Part resiant, he shall not incur the Forfeitures aforesaid.

If with a *Nuper*, &c.

Execution.

[*Vide ante* 60, 61, &c.]

BY Stat. 21 Jac. 24. The Party or Parties, at whose Suit any Person shall stand charged in Execution for Debt or Damages recovered, their Executors or Administrators, may after the Death of the Person so charged in Execution, lawfully sue forth new Execution against the Lands and Tenements, Goods and Chattels of the Person so deceased, in like manner as if the Person deceased had never been taken in Execution. Howbeit, this Act shall not extend to Lands sold *bonâ fide*, (after the Judgment given) when the Money raised thereupon is paid, or secured to be paid to Creditors, in Discharge of due Debts.

Execution.

[*Vide ante* 61.]

Capias returnable such a Day, and Execution of it *sedente Cur*, good; *Secus* not, *Mod. Cases*.

When Execution is compleat upon an *Habere fac' Possession'*. *Mod. Cases* 27.

Execution compleat.

Cesset Executio.

If a *Cesset Executio* be for a Year, Execution may be within the next Year without *Sci' fa'*. *Mod. Cas.* 288.

Execution
entire.

That Execution is an entire Thing, and the Consequence thereof. *Idem* 298.

Execution of Statutes.

Great Officers may examine Maintenance, Retainers, &c.

BY Statute 3 *H.* 7. 1. The Lord Chancellor, Treasurer and Privy Seal, or any two of them, calling to them a Bishop, a Lord of the Council, and the two Chief Justices, (or two other Justices in their Absence) upon Bill of Information put to the Chancellor, for the King, or any other for Maintenance, Retainers, Embraceries, untrue Demeanings of Sheriffs, taking of Money by Juries, great Riots, or unlawful Assemblies, have Authority to call before them by Writ or Privy Seal, the said Misdoers, and them and others to examine, and to punish them according to the Statutes in that Behalf made, in like manner as if they were convicted by due Order of Law.

An Associate.

By Statute 21 *H.* 8. 90. The President of the King's Council shall be associate with the Lord Chancellor, &c. for the Examination and Punishment of the Misdoers aforesaid, according to the said Statute of 3 *H.* 7. 1. and other Statutes thereof made.

Executors

Executors and Administrators.

[*Vide ante*, pag. 20, &c.]

BY *Westm. 2. 23. 13 Ed. 1.* Executors shall Account. have a Writ of Accompt, and like Action and Process in the same Writ as their Testator should if he had lived.

By Statute 4 *Ed. 3. 7.* Executors shall have Trespass. an Action for a Trespass done to their Testator as for his Goods and Chattels carried away in his Life, and shall recover their Damage in like manner as he, whose Executors they are, should have done if he had lived.

By Statute 9 *Ed. 3. Stat. 1. 3.* In a Writ of Effoin. Debt brought against Executors, they shall have but one Effoin amongst them all before Appearance, and another after, so that they shall not fourch by Effoin.

Here, though the Sheriff upon the Summons return *nihil*, yet an Attachment shall be awarded; and upon *nihil* also returned thereupon the great Distress, and then he or they that appear shall answer. Return.

Albeit some of them after Appearance Default. make Default at the Return of the great Distress; yet shall he or they be put to answer, that first appeared at the great Distress so returned.

If Judgment pass for the Plaintiff, he shall Judgment. have Judgment and Execution against them that have pleaded, and against all others named in the Writ of the Testator's Goods, as well as if they had all pleaded.

Any

Saving.

Any may sue in this Case according to the Law formerly used, (if he please) notwithstanding this Statute.

Executors of Executors.

By Statute 25 *Ed. 3. Stat. 5. 5.* Executors of Executors shall have Actions of Debt, Account, and of Goods carried away of the first Testators; and Execution of Statute-Merchants and Recognizances made unto him, and shall also answer to others so far forth as they shall recover of the first Testator's Goods, as the first Executors should have done.

Servants embezilling Goods after their Masters Death.

By Statute 33 *H. 6. 1.* Where Servants after the Death of their Lords or Masters do embezel their Goods, after full Information thereof made to the Lord Chancellor by the Executors, or two of them, of such Spoil made, the said Lord Chancellor by Advice of the two Chief Justices and Chief Baron, or two of them, shall have Power to make such Writs to be directed to such Sheriffs, as to them shall seem fit, to make Proclamation in such Places within twelve Days after Delivery of the said Writs, as to the said Chancellor by the Advice aforesaid shall seem reasonable, that the Offenders appear in the *King's-Bench* at the Day limited in the Writ; which Proclamation shall be made 15 Days before the Day-appearance; when if the Offender appear not, he shall be attainted of Felony.

Party imprisoned.

If the Party appear, the Justices shall commit him to Prison, there to remain until he hath answered the Executors in their Actions, and

and the same Actions be determined : Provided, that they be pursued with Effect, and not slackly.

The Offender may be bailed by the Justices of that Bench, procuring two sufficient Persons to be bound with them to the Executors by Recognizance in the same Court, to keep such Day as he shall have by the same Court. Bail.

The Gaoler shall not let them go at Liberty without the Justices Order, in Pain of 40 l. Order.

[See before 20, 21, &c.]

Exigent and Outlawry.

EXigent is a Writ to be sued out after a *Capias alias & Pluries*, in order to outlaw the Defendant if he doth not appear. Exigent, what.

And a Man is said to be outlawed, if he doth not appear at the Return of the Exigent, if it be return'd with a *Quinto exactus & non comperuit*. Outlawry, what.

Note, There are several small Books which treat of suing to the Outlawry, well known and easy to be had ; as *Compleat Attorney*, *Instruc' Cleric*, *Enchiridion Cleric*, &c. Books of Directions.

But now as to some Statutes relating thereto :

By Statute 31 Eliz. 3. In every Action Personal where an Exigent shall be awarded, a Writ of Proclamation shall be also awarded, Exigent and Proclamation.
and

A Review of all the Statutes,

and issue out of the same Court, of the same *Teste* and Return with the Exigent, and shall be delivered of Record, and directed to the Sheriff of the County where the Defendant at the Time of the Exigent was dwelling, and shall contain the Effect of the same Action.

Three Proclamations.

The Sheriff shall thereupon make three Proclamations, *viz.* one in a full County, another at the Sessions, and the last (one Month at least before *Quinto Exact.* by Ver- tue of the Exigent) at or near the Church or Chapel-door of the Parish where the Defendant was dwelling at the Time of awarding the same Exigent, upon a *Sunday* after Divine Service and Sermon, or (in case there be no Service) after Divine Ser- vice: And if he dwell in no Parish, then in the Parish next adjoining his Place of abode; and all Outlawries otherwise had, shall be void.

Fees.

The Officer for making the Exigent and Proclamations, may take such Fees for the same as are limited by the Stat. of 6 H. 8. 4. and the Sheriff for making the Proclamation at the Church-door, shall have 12 *d.*

Summons in real Actions.

In Real Actions, after Summons upon the Land (fourteen Days at least before the Re- turn thereof) Proclamation of the Summons shall be made upon a *Sunday* in Form afore- said, in the Parish where the Land lies; which Proclamation shall be returned, with the Name of the Summoners.

Alias and *Plu- ries.*

If the Summons be not so proclaimed, no *Grand Cape* shall be awarded, but an *Alias* and *Pluries*

pluries Summons, until a Summons and Proclamation be duly made according to this Act.

Before Allowance of a Writ of Error, or Error of Reversing of an Outlawry by Plea or otherwise, the Defendant in the original Action shall put in Bail to appear and answer the Plaintiff, and also to satisfy the Condemnation if the Plaintiff begin his Suit before the End of two Terms next after the Allowance of the said Writ, or avoiding the Outlawry.

By 4 & 5 W. & M. cap. 22. An Exigent In criminal and Proclamation must issue out upon criminal Matters, to be delivered to the Sheriff three Months before the Return thereof. *Vide ante* pag. 13.

And see there when and how outlaw'd In civil Persons may appear by Attorney, and reverse the same without Bail, unless special Bail be required. 4 & 5 W. & M. cap. 18.

And how the Sheriff may take an Attorney's Engagement to appear, and to reverse the Outlawry. *Idem* 14. Attorney's Engagement.

And how the Outlaw may give the Sheriff Security for Appearance and Reversal by Attorney, (if he shall not be able so to do within the Return of the Writ.) Security by Outlaw.

Extent.

Extent.

What this
Writ is.

THIS Writ is taken out to value the Lands of one bound by a Statute, &c. that hath forfeited it; and to deliver to the Conuzee at such indifferent Rates, so that by the Yearly Profits the Conuzee may be in time satisfied his Debt.

See more of this in 1 *Lill. Pract. Regist.* 452, &c.

Extortion.

Not by the
King's Offi-
cers :

BY *Westm.* 1. 26. 3 *Ed.* 1. No Sheriff, or other Officer of the King, shall take any Reward to do his Office, but shall be paid by the King; and if they do so, he shall render the Double, and be punished at the King's Will.

Nor Clerks:

By *Westm.* 1. 27. 3 *Ed.* 1. Clerks shall not commit Extortion, in Pain to lose the Service of their Master for one Year.

Nor Cryers,
&c.

By *Westm.* 1. 29. 3 *Ed.* 1. Officers, Cryers of Fee, and Marshals of Justices in *Eyre*, shall not commit Extortion, in Pain to render the Treble, and to be otherwise punished at the King's Will.

Nor Custom
Officers.

By Statute 28 *H.* 6. 5. Merchants being distrained or arrested by Officers of the Custom for undue Charges and Impositions, may have their general Actions of Trespass against such Offenders, and shall in that Case recover 40 *l.* Damages, if they pursue their Actions within two Months.

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If they pursue them not within that Time, ^{Action limited.}
 any other may do it by Action of Trespass
 also, wherein they shall also recover 40 l.
 Damages, to be divided betwixt the King
 and such Prosecutor.

[*Vide postea Ordinaries.*]

F.

Fairs and Markets.

BY Statute 17 Ed. 4. 2. No Steward of a Pypowder
 Pypowder Court shall hold Plea upon ^{Court.}
 any Action, unless the Plaintiff or his
 Attorney, in the Presence of the Defendant,
 do first swear, That the Matter of the De-
 claration was done within the Jurisdiction
 and Time of the Fair; and yet the Defen-
 dant may nevertheless profer an Issue against
 such Oath: And if it be tried, or the Plain-
 tiff or his Attorney refuse to swear, the De-
 fendant shall be discharged.

If any such Steward do contrary to this ^{Steward.}
 Act, he shall forfeit Five Pound, to be di-
 vided betwixt the King and the Prosecu-
 tor.

This Act shall not prejudice the Liberties ^{Liberties.}
 of the Bishop of *Duresm.*

By Statute 1 R. 3. 6. The Stat. of 17 E. 4. 2.
 made perpetual.

By

London.

By Statute 3 *H. 7. 9.* Upon an Ordinance made by the City of *London*, to prohibit Citizens to carry their Wares to Fairs and Markets out of the City; this Act gives them Liberty, and makes that Ordinance void and none shall trouble any Citizen for doing, in Pain of 40 *l.* to be divided betwixt the King and the Prosecutor.

Toll-taker.

By Statute 2, 3 *P. & M. 7.* Every Owner of a Fair or Market shall appoint a Toll-taker (where Toll is taken), or a Book-keeper (where no Toll is paid), to sit there from Ten of the Clock in the Forenoon to Sun-set, in Pain of 40 *s.* for every Default.

Account of Horses sold.

The Toll-taker, or Book-keeper, shall (within one Day after) deliver unto the said Owner, a Note of all the Horses sold there that Day, in Pain of 40 *s.* which Note the Owner shall subscribe, in like Pain 40 *s.*

Property not altered.

Sale of a stolen Horse in a Fair or Market, without Entry in the Book, as aforesaid, and without staying there in open View by the Space of an Hour, at least, betwixt Ten of the Clock and Sun-set, shall not alter the Property of the right Owner; but that he may, by Vertue of this Act, seize and replevy him, wheresoever he finds him.

Forfeitures divided.

Justices of Peace in Sessions have Power to hear and determine the Breach of this Statute; and the Forfeitures shall be divided betwixt the King and the Queen's Majesty and the Prosecutor.

Fee.

Where no Toll is due, the Book-keeper's Fee for entring every Contract is 1 *d.* and no more

By Statute 31 *Eliz.* 12. Every Seller, or Voucher upon Sale, Exchanger of an Horse in a Fair or Market, which being unknown to the Toll-taker or Book-keeper, doth not procure one credible Person, that is well known unto him, to vouch the Sale of the same Horse; also every false Voucher, and the Toll-taker or Book-keeper that suffers such Sale or Exchange to pass, shall forfeit 5 *l.* to be divided betwixt the Queen and the Prosecutor. And besides, the Sale of such Horse shall be void.

The Names of the Buyer, Seller and Voucher, and the Price of the Horse, shall be entred. entred in the Toll-book, and a Note thereof delivered to the Buyer under the Toll-taker's or Book-keeper's Hand; for which the Buyer shall pay 2 *d.*

Justices of Peace in Sessions have Power to hear and determine these Offences.

Notwithstanding such Sale and Voucher, as aforesaid, the right Owner or his Executors may redeem a stolen Horse, if they claim him within six Months after the Stealing at the Parish or Corporation where he shall find him, and make Proof by two sufficient Witnesses before the next Justice of Peace in the Country, or before the Head Officer of a Corporation, that the Horse was his, and repay to the Buyer such Price for the Horse as the same Buyer shall upon his own Oath, before such Justice or Officer, testify to have paid for him.

An Accessary of an Horse-stealer shall not have his Clergy. Accessary.

Market-overt
in London.

Note, That every Day of the Week, except Sunday, is a Market-Overt in London; also every Shop in London is a Market-Overt for such Goods only as by his Trade the Owner may sell: But if the Sale be privately, as in a Ware-house, and not openly and publicly in the Shop, the Property is not altered. 5 Rep. 83. b.

False Imprisonment.

General Issue.

IN False Imprisonment against a Parish-Officer, as a Justice, Constable, &c. he may plead Not guilty, and give the Special Matter in Evidence, by 7 Jac. I. cap. 5. Vide 21 Jac. I. cap. 12.

False Judgment.

How to be
tried.

BY *Marlbridge* 20. 52 H. 3. None but the King shall hold Plea of False Judgment.

By Statute 1 Ed. 3. 4. If against a Record brought into the King's Court by Writ of False Judgment, the Party alledgeth that the Record is otherwise than the Court did record the same, it shall be tried by those of the Country who were present when the Record was made; but if they appear not upon the Sheriff's Return of them with others, it may be tried by other good Men of the Country.

For preventing Frauds in Judgments, &c. vide ante 80.

Fees.

Fees.

BY *West. 2. 42. 13 Ed. 1.* Several ancient Fees of Marshals, Chamberlains, Porters of Justices in *Eyre*, and Serjeants bearing Verge before the Justices at *Westminster*.

[See the Statute.]

By *West. 2. 44. 13 Ed. 1.* Porters bearing Verge before the Justices of the Bench in the Circuit, shall take for keeping a Jury only 10 *d.* for the Bills nothing : Upon a Recovery without a Jury, nothing : Upon a Recovery against many by one Writ, 4 *d.* For Homage done in the Bench, they shall have their upper Garment. Of great Assizes, Attaints, Juries, and Battel waged, the Fee is 12 *d.* For the Pleas of the Crown, the Fee is 12 *d.* the Dozen. For every Prisoner delivered, 4 *d.* The Chirographer's Fee, is 4 *s.* The Clerk's Fee for writing Originals, is for every Writ 1 *d.*

Marshal's Fees, &c.

Of Porters bearing Verge, &c.

[See the Statute ; and see before Clerks in Chancery, Chirographers, &c.]

Note, The 29 *Eliz. c. 4.* which gives Fees to the Sheriffs, doth only extend to their executing of Writs of Execution in Counties, and not Cities, and there they are allowed 12 *d.* in the Pound for the first 100 *l.* and 6 *d.* in every Hundred over : But then they ought to pay their own Bailiffs out of their Poundage-Money for their Pains ; yet of late the Sheriffs of Cities demand the

Sheriffs Fees on Execution.

same as the Sheriffs of Counties have; and some say, they have recovered it.

Note.

And it is noted, That the Statute only says, That they may take the above-mentioned Sums.

Felony, and Burglary. Vide ante 280.

Burglary continued.

Reward for
taking Per-
sons guilty of
Burglary, &c.

Certificate.

BY Statute 5 *Ann. c. 31.* Every Person who shall take any one guilty of Burglary, or the felonious Breaking and Entry of any House in the Day-time, and prosecute them unto Conviction, shall receive above the Reward given by 10 & 11 *W. 3. cap. 3.* the Sum of 40 *l.* within one Month after such Conviction, to be paid by the Sheriff of the County where the Felony was done, without any Fee, upon tendring a Certificate under the Hand of Judges before whom the Conviction was, certifying the Conviction and in what Parish the Felony was committed, and the Taking by the Person claiming the Reward: And in case of Dispute, the Judges may appoint the said Reward to be divided as to them shall seem just: And if the Sheriff shall die, or be removed, in one Month after Demand, and Non-payment, then the succeeding Sheriffs shall pay the same in one Month after Demand, and Certificate brought; and the Sheriff making Default, shall forfeit to the Person or Persons to whom such Money is due, double

the Money, to be recovered in any the Courts of Record at *Westminster* by Action of Debt, Bill or Information with treble Costs.

In case any Person shall be killed by such House-breaker, endeavouring to apprehend him, then the Executors or Administrators, or Person to whom the Right of Administration shall belong, upon Certificate delivered under the Hand and Seal of the Judge of Assize of the County where the Fact was done, or the two next Justices of Peace, of the Person's being so kill'd, shall receive 40 *l.* from the Sheriff where the Fact was done; and upon Failure of Payment, double the 40 *l.* to be recovered with treble Costs, as aforesaid.

In case the Felon shall kill any such Person.

And upon producing the Certificates and Receipts, the Sheriffs shall be allowed upon their Accounts, all Monies paid, other than the Penalties; and if not sufficient in the Hands of such Sheriff, the Sheriff shall be repaid by the Lord Treasurer upon Certificate of the Clerk of the Peace.

Sheriff's Account to be allowed.

And if any Person shall commit such Burglary or Felony, and after discover Two who shall have committed such Burglaries or Felonies, so as they be convicted, such Discoverer shall have 40 *l.* and the other Advantages given to such Taker or Prosecutor, and shall be entitled to a Pardon of all Burglaries and Felonies, except Murder and Treason, which shall be a Bar to any Appeal for the same.

If one Felon shall discover two others, &c.

If any Person shall receive or buy knowingly any stolen Goods, or knowingly harbour or conceal Felons, he shall be taken as

Buyers of stolen Goods, &c.

Accessory to the Felonies; and being convict, shall suffer Death as a Felon.

May be prosecuted.

If principal Felon cannot be taken so as to be convict, yet the Person buying or receiving knowingly, may be prosecuted for a Misdemeanor, to be punished by Fine and Imprisonment, or other corporal Punishment, as the Court shall think fit; which shall exempt the Offender from being punished as Accessary, if the Principal be after convict.

Settlement of Shares.

The Judge before whom such Felons and House-breakers shall be convict, shall settle the Rights and Shares of Persons entitled to Certificates, and deliver the Certificates without Fee before the End of such Assizes or Sessions, wherein such Conviction shall be had.

Concerning the Sheriffs of London, &c.

The Rewards hereby granted being generally committed in, and to be paid in *London* and *Middlesex*, by the Under-Sheriffs, it's hereby enacted, That no Sheriff of *London* and *Middlesex* take directly or indirectly, any Sum or Present for the Execution of the Place of Under-Sheriff, nor oblige his Under-Sheriff by Covenant or Promise, or otherwise, to be at any Expence in relation to the said Place of Under-Sheriff, which hath been usually paid by the High-Sheriff, except the Rewards given by this or any other Act for the Apprehension of Highway-men, Clippers, Coiners and House-breakers, and the Fees for passing such High-Sheriff's Accompts in the *Exchequer*, and such other Disbursements as have been customarily sustained by the Under-Sheriff.

Reine

Feme Covert.

[Vide 237. Baron and Feme.]

A Feme Covert was indicted by her Husband for poisoning his Cows with bruised Glass put in their Grains; and she was admitted in *Forma pauperis*, though the Court said the Husband could not convict her. *Mod. Cas.* 88. [Vide Indictment.]

Husband indicted his Wife for poisoning his Cows.

A Woman was arrested by the Name of *Minors*, and gave Bail-Bond by that Name, and now would plead *Misnomer*. *Per Cur'*, If one be arrested by a wrong Name, and brought into Court, he may plead *Misnomer*; and if Feme Covert be arrested by a wrong Name, and give Bail-Bond, yet she may plead *Misnomer*; for her Bond being that of Feme Covert, she may plead *non est Factum* to it, *ideo* it will not estop her; *idem* 311. So upon *non Assumpsit*, she may give Coverture in Evidence. *Idem* 230.

Feme Covert gives a Bail-Bond, &c.

If a Feme Covert, after parting with her Husband by Consent, and Maintenance allowed, commits Adultery, and runs her Husband into Debt, he shall never be charged with her Debts till a new Cohabitation. *Idem* 147.

She parts by Consent, and runs her Husband in Debt, &c.

Feoffments, and Fraudulent Conveyances.

[*Vide ante*, pag. 67, &c.]

Disseisee to
recover a-
gainst Dissei-
sor.

BY Statute 1 R. 2. 9. Every Gift of Feoffment of Lands made by Fraud or Maintenance, shall be void; and the Disseisee (notwithstanding such Alienation) shall recover against the first Disseisor both his Land and double Damages: Provided he commence his Suit within one Year after the Disseisin, and that such Feoffor be then Pernor of the Profits.

Pernor of the
Profits.

By Statute 4 H. 4. 7. The Disseisee shall have his Action against the first Disseisor, during the Life of the same Disseisor, so as such Disseisor be also Pernor of the Profits at the Time of such Suit commenced; but as to other Writs in Plea of Land, the Demandant shall commence his Suit within the Year against him that is Tenant of the Freehold, as the Time of the Action accrued to him, so as such Tenant be also Pernor of the Profits at the Time of such Suit commenced; notwithstanding the Statute of 1 R. 2. 9.

Novel Disseisin,
&c.

By Statute 11 H. 6. 3. In all Writs grounded upon *Novel Disseisin*, Disseisees may have Recoveries against the Disseisors of their Feoffees, as well as in Affize of *Novel Disseisin*, so as such Disseisors or their Feoffees, against whom the Writ is brought, be Pernors of the Profits at the Time of the Writ

purcha-

purchased, notwithstanding any Gifts or Feoffments made to other Persons to delay the Demandants.

[See before 67, &c.]

And note, That 13 Eliz. cap. 5. extends to defraud Creditors; and 27 Eliz. cap. 4. extends to Purchasers.

[See pag. 188, 334. concerning a Debtor making Fraudulent Conveyances.]

Fraudulent Conveyances about Election of Parliament-Men, &c.

[See before pag. 70. to prevent such Conveyances.]

BUT Note, That it is thereby further enacted, That after the First of May 1712. no Person shall vote for the Election of a Knight of a Shire in England, in Right of any Lands which have not been assessed to the Publick-Taxes, Church-Rates, and Parish-Duties, in such Proportion as other Lands of 40 s. per Annum, in the Parish where the same shall be, and for which such Person shall not have received the Rents, or be entitled so to do, to the Value of 40 s. or more, to his own Use, for one Year before such Election, unless it come by Descent, Marriage, Devise, or Presentation to some Benefice, &c. and voting contrary to the true Intent hereof, shall forfeit 40 l. One Moiety to the Poor where the Lands lie, the other to the Person suing for the same.

Who shall, or shall not vote for a Knight of the Shire.

The

7 W. 3.
Oath repealed.

The Act 7 W. 3. as to so much only as concerns the Oath to be administered to Freeholders, shall be, and is hereby repealed.

New Oath appointed.

And upon every Election to be made, every Freeholder, before Polling (if required) shall take the Oath mentioned in this Act: Which Oath the Sheriff, &c. is to administer; and such Person being convicted of Perjury, or Suborning any Freeholder, &c. to commit such Perjury, he shall incur the Penalties in the Act 5 Eliz. for punishing Perjury.

How the Sheriff may enter the Elector's Freehold, &c.

The Sheriff, &c. shall enter not only the Place of the Elector's Freehold, but also the Place of his Abode, and enter *Jurat* against the Name of every Voter, who shall take the Oath, and within 20 Days after such Election, shall deliver upon Oath unto the Clerk of the Peace, all the Poll-Books without Alteration; and where there is more than one Clerk, then the original Poll-Book to one such Clerk of the Peace, and attested Copies thereof to the rest, to be kept among the Records of the Sessions.

Poll Tables.

The Sheriff of the County of York shall appoint seven Tables or Places for taking the Poll on any new Election of Knights of the Shire for the said County, at the Charge of the Candidates.

Simile.

And the Sheriff of the County Palatine of Chester shall appoint Seven Tables or Places, and no more, in the Shire-Hall, two at the upper End, two at each Side, and one at the lower End.

Any

Any Quaker, during the Act 7 W. 3. upon such Election, may declare the Effect of the said Oath, upon his Solemn Affirmation, and shall be admitted to give his Vote, and the Sheriff shall enter *Affirmat* against the Name of every such Quaker; and if convicted falsely to have affirmed any Thing, which, if the same had been in the usual Form, would have amounted to Perjury, such Quaker shall incur the same Penalties as herein before enacted against Perjury.

Quakers
Affirmation.

Fieri Facias.

BY Statute 29 Car. 2. cap. 3. The Sheriff must endorse the Day that the *Fieri Facias* was delivered unto him, for from that Day the Goods are bound; and that Writ shall be executed and satisfied before another that comes afterwards.

Day of Deli-
very to the
Sheriff.

That the Sheriff may sell Goods upon a *Fi fa'*; but cannot take the Money upon a *Ca fa'*, neither can he upon a *Fi fa'* deliver the Goods taken to the Plaintiff in Satisfaction of his Debt, because his Authority is only to sell. *Lutw.* 588, 589.

How the
Sheriff may
dispose of
Goods.

How the Sheriff upon a *Fi fa'* may sell a Term, and all the Defendant's Interest in the Land. 4 Rep. 74.

How of a
Term, &c.

Fieri fa' to the Sheriff before Judgment entered, and the Value levied; and then another *Fi fa'* brought, *nulla bona* return'd, and an Action for a false Return. *Mod. Cas.* 184.

One *Fi fa'*
executed, and
then another
brought, &c.

Filing

Any

Filing of Process.

THAT the Filing any Process, or other Thing in Court, makes it a Record of the Court. 1 *Lill. Reg.* 460.

When a *Capias* ought to be filed. *Ibid.*

When a Declaration, or Warrant of Attorney, may be filed, if there is no Rule of Court to the contrary. *Ibid.*

What Affidavits must be filed before read, according to 29 *Car. 2. cap. 5.* see before pag. 27.

Fines.

Pleading at the Bar.

BY Statute *De finibus*, 18 *Ed. 1. Stat. 4.* After the Writ original is delivered in the Presence of the Parties before the Justices, the Pleader shall say, *Sir Justice, Conge de accorder*: Then the Justice shall say, What saith *Sir R?* And when the King's Fine is agreed for, and the Peace cried, the Pleader shall declare the Substance of the Fine.

Writ original.

A final Concord cannot be levied in the King's Court without Writ original, before four Justices in the Bench, or in *Eyre*; and it must also be in the Presence of the Parties, who ought to be of full Age, of good Memory, and out of Prison; and if a Feme Covert be one, she must be examined by four of the said Justices, and if she consent not, the Fine cannot be levied.

Operation.

The Reason of such Solemnity in the Taking of a Fine, is, because it bars all Persons of full Age out of Prison, of good Memory,

Memory, and within the four Seas, the Day of the Fine levied, if they make not their Claim of their Action within a Year and a Day by the Country.

By Statute *De finibus levatis*, 27 Ed. 1. Stat. 1. **Exception.** It shall be no good Exception to a Fine, that before or at the Time of the Fine levied, the Demandant or his Ancestors were seised of the Land contained in the Fine, or of some Part thereof.

Fines shall be openly read at two certain **Reading.** Days in the Week by the Discretion of the Justices, and in the mean Time all Pleas shall cease.

The Statute of *Carlisle*, 15 Ed. 2. In Pleas **Warrantia** of *Warrantia Chartæ*, Covenant or other, **Chartæ.** whereupon Fines are to be levied before the Justices of the Bench, as well the Demandants as Tenants, (before such Fines pass) shall appear personally, to the end their Age, Idiocy, and other Defects (if any be) may be discerned.

If the Party be not able to come before **Party disa-** the Justices in the Court, then two, or one **bled to come.** of them (by the Assent of the rest) shall go to the Party, and receive his Cognizance; and if but one go, he shall take with him an Abbot, Prior, or Knight, being of good Fame and Credit.

The Commissioners that take the Cogni- **Certificate.** zance, shall make Certificate thereof to the Justices, to the end the Fine may be lawfully levied, according to the former Ordinance.

Attornies.

Neither the Barons of the *Exchequer*, nor the Justices, shall admit any Attornies save only in Pleas, that pass before them; neither shall any of their Clerks or Servants so do, and every Admission otherwise shall be void.

Chancellor.

The Authority of the Chancellor, and of the Chief Justices, for admitting Attornies, (as hath been heretofore observed) is saved.

Non Claim.

By Statute 3 *Ed.* 34. 16. The Plea of Non Claim of Fines shall be no Bar hereafter.

Pledges.

By Statute 38 *Ed.* 3. Stat. 1. 3. Fines taken before the Justices shall be in the Presence of the Pledges, who shall know the Sum of their Fine before they depart.

Entry on Roll
to prevent
Imbezilment.

By Statute 5 *H.* 4. 14. To prevent the Damages that may happen by the embeziling of the Feet and Notes of Fines, all Writs of Covenant, and other Writs whereupon Fines are levied, together with the *Dedimus potestatem*, (if any be) and all Knowledges and Notes of the same, before they be drawn out of the Common Bench by the Chirographer, shall be recorded in a Roll, to remain with the Chief Clerk of that Court for the old Fee of 22 Pence, usually paid to him for Entering the Concord, to the end that (in case any Notes or Fines be embeziled) the Party may have Recourse to the said Roll, to have Execution thereof.

Four Proclamations.

By Statute 4 *H.* 7. 24. Every Fine after the Ingrossing, shall be proclaimed in the Court the same Term, and the three next, four

for several Days in every Term; and in the
an Time all Pleas shall cease.

The Proclamations being so made, the **The Effect**
shall conclude all Persons, both Privies thereof.
and Strangers, except Women Covert, Per-
sons under Age, in Prison, out of the Realm,
of *non sane* Memory, being not Parties to
the Fine.

The Right and Interest that any Person **Persons sa-**
Persons (other than Parties) hath or have ved.

the Time of the Fine ingrossed, is saved;
that they or their Heirs pursue such their
Right or Interest by Action or lawful Entry
within five Years after the Proclamations so
made: So also is the Right and Interest sa-
ved, which accrues after the Ingrossing of
the Fine; so that the Parties having the
same, pursue it within five Years after it so
accrues, and in this Case the Action may
be brought against the Pernor of the Pro-

If at the Time of the Fine ingrossed, or **Five Years**
such Accruer, as aforesaid, the Persons allowed.
Covert (and no Parties to the Fine), un-
der Age, in Prison, out of the Realm, or
of *non sane* Memory, they or their Heirs
have Time to pursue Actions within five
Years after such Imperfection removed.

The Exception, that none of the Parties, **Exception**
or any to their Use, had any Thing in the saved.
Hands at the Time of the Fine levied, is sa-
ved to all Persons, except Parties and Pri-

Fines at the Common Law have the same **Common**
Force they had before the Making of this Law.
; and a Fine may be levied this Way,
or

or at the Common Law, at the Pleasure of the Parties.

Operation of Fines.

By Statute 32 H. 8. 36. All Fines levied by any Person or Persons of full Age, of Lands intailed before the same Fine, to themselves, or to any of their Ancestors, in Possession, Reversion, Remainder or Use shall immediately after the Fine ingrossed and Proclamations made, be a sufficient Bar against them and their Heirs, claiming only by such Intail, and against all other Claiming only to their Use, or to the Use of any Heir of their Bodies.

Feme.

Howbeit, this Act shall not bar the Interest of any Persons accrued by reason of any Fine levied by a Woman after her Husband's Death, contrary to the Statute of 11 H. 7. 20.

Persons restrained.

A Fine levied by him, who is restrained by any express Act of Parliament so to do shall be void, notwithstanding this Act.

To what this Act extends not.

This Act shall not extend to any Fine heretofore levied of Lands now in Suit, or heretofore lawfully recovered in any Court by Judgment or otherwise; nor to any Fine of Lands intailed by the King's Letters Patents, or any Act of Parliament, the Reversion thereof at the Time of such Fine levied being in the King.

Lancaster.

By Statute 37 H. 8. 19. Fines levied before the Justices of Assize at *Lancaster*, or one of them, and openly read and proclaimed at the three several Sessions before the said Justices, or one of them, of Lands lying within

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within that County Palatine, viz. upon three several Days in the Sessions when the Fine is ingrossed, and three other several Days in each of the two Sessions then next following, shall be of like Force as Fines acknowledged before the Justices of the Common-Pleas.

By Statute 2, 3 Ed. 6. 28. This Statute ordains all Fines of Lands within the County Palatine of *Chester*, to be of like Force with those of the *Common-Pleas*, being proclaimed before the High Justice there, or his Deputy, in like Sort as those of *Lancaster* are proclaimed.

By Statute 1 M. Parl. 1. 7. All Fines whereupon Proclamations are not duly made, (by reason of the Adjournment of any Term by Writ) shall be good as if that Term had been holden from the Beginning to the End; and Proclamations therein made, according to the Statute 4 H 7. 24. Term adjourn'd.

This Act shall not extend to any Fine heretofore levied of Lands now in Suit, or heretofore lawfully recovered by Judgment, or otherwise.

By Statute 35 Eliz. 2. Fines in the Common-Pleas shall be proclaimed four Times only, viz. once in the Term wherein the Fine is ingrossed, and once in each of the three Terms then next following. Four Proclamations, and when.

By Statute 21 Jac. 26. It is Felony without Benefit of Clergy to acknowledge, or procure to be acknowledged, any Fine, Recovery, Deed inrolled, Statute, Recognizance, Where Felony to acknowledge a Fine, &c.

zance, Bail, or Judgment, in the Name of any Person not privy or consenting thereunto : Howbeit, this Offence shall not corrupt the Blood, nor take away Dower ; neither shall it extend to Judgment acknowledged by an Attorney of Record for another Person.

Note, According to 5 Co. Rep. 38. there are five Parts of a Fine :

The several
Parts of a
Fine.

1. An Original Writ.
2. *Licencia Concordandia.*
3. The Concord.
4. The Note of the Fine.
5. *Pes Finis.*

Ancient
Fines.

Vide ante 17. concerning Writs of Error upon Ancient Fines and Recoveries, &c.

Uses and
Trusts declar-
ed.

By 4 & 5 Ann. cap. 16. Declarations of Uses or Trusts by Deed, made after Fines and Recoveries, shall be good in Law, as if 29 Car. 2. cap. 3. (concerning Frauds and Perjuries) had not been made: *Vide ante, pag. 41.*

Entry, Claim
and Prosecu-
tion.

See there also what Entry, Claim and Prosecution, must be made to avoid Fines, according to 21 Jac. 1. cap. 16. for Limitation of Actions.

Inrolment.

See also before, pag. 55. how according to 32 Eliz. 3. Fines and Recoveries, and all Matters concerning them, may be inrolled.

Concerning false *Latin* in Fines. *Ibid.*

Persons

Persons not bar'd from Writs of Error upon late Fines, as there mentioned. *Ibid.* Error in Fines.

Of a Certificate of Fines and Recoveries within one Year. *Id.* 56. Certificate.

Where no Attornment upon Fines to be entred on Record. *Ibid.* Attornments.

A Table of Fines to be fixed in Court by the Chirographer. *Id.* 57. A fixed Table, &c.

And that Records shall not be carried out of the Office, &c. *Ibid.*

See more concerning *Fines and Recoveries*, and the Operations thereof, in a Treatise of *Fines and Recoveries*; also in *Compleat Attorney*, 1 *Infr' Cleric*, 1 *Lill. Reg.* *Townsend's Preparative*, last pub. &c. Books referred to.

Forcible Entry.

BY Statute 5 R. 2. 7. None shall enter into Lands or Tenements by Force, in Pain of Imprisonment and Ransom at the King's Pleasure. Force forbidden.

By Statute 15 R. 2. 2. When Forcible Entry is made into Land, &c. or Church-Livings, one or more Justices of Peace, taking sufficient Power, and going to the Place so kept by Force, may commit the Offender to the next Gaol, there to remain convict by the Justices Record, till he hath made Fine and Ransom to the King: And herein the Sheriff, and all others, shall be Assistants, in Pain of Imprisonment, and great Fines making. Offenders committed.

By Statute 8 H. 6. 9. The Stat. of 15 R. 2. 2. shall be duly put in Execution both against Forcible Entry and Forcible Detainer, although

**Jury to be
summoned.**

though it were after Peaceable Entry ; and all this at the Costs of the Party grieved.

When Complaint of any such Entry or Detainer shall be made to any Justice or Justices of Peace, he or they by Precept shall command the Sheriff to summon a sufficient Jury ; and having by them made Inquiry of the Force committed, shall cause the Tenements to be seized, and that as well in the Absence as Presence of the Party offending : And here, the Alienation of the Tenements, (so entred into, or detained by Force) for Maintenance, shall be adjudged void.

**Issues of
of Jurors.**

If the Jurors make Default, Issues are to be set upon them by the Sheriffs thus ; 20 s. upon the first Precept, 40 s. upon the second, 100 s. upon the third ; and for every Default after, the Double.

**Sheriff's For-
feiture.**

The Sheriff or Bailiff that shall neglect his Duty herein, shall forfeit 20 l. to be recovered against him, as well before the Justices aforesaid, as before Justices of Assize by Indictment or Bill ; and to be divided betwixt the King and the Prosecutor.

**Treble
Damages.**

In an Assize of *Novel Disseisin*, or Action of Trespass against the Party guilty of Forcible Entry, Forcible Detainer and Alienation, as aforesaid, the Party grieved shall recover treble Damages.

**Head Offi-
cers.**

Head Officers, and Justices of Peace of Corporations, have like Power within their Franchizes that other Justices of Peace have within Counties.

This

This Statute shall indamage none where peaceable Possession hath been enjoyed by the Space of three Years.

By Statute 31 *Eliz.* 11. There shall be no Restitution upon an Indictment of Forcible Entry or Detainer, where the Defendant hath been three Years next before in quiet Possession, and his Estate therein not ended. Where no Restitution.

By Statute 21 *Jac.* 15. Upon Force or Detainer, as aforesaid, a Justice or Justices of Peace have Power to give Restitution of Possession, as well unto Tenants for Years, by Elegit, Statute-Merchant or Staple, Copyholders, or Guardians by Knights-Service, as unto those that claim Freehold or Inheritance. Restitution made.

G.

Gaming Excessive.

Security given for Money won at Cards and Dice, to be void.

BY an Act, for the better Preventing of Excessive and Deceitful Gaming, enacted, That after the First of *May* 1711. all Notes, Bills, Bonds, &c. given by any Person, where the Consideration is for Money, or other valuable Thing, won by Gaming or Playing at Cards, Dice, Tables, Tennis, Bowls, or other Game; or by Betting, or for Repaying any Money knowingly lent for such Gaming or Betting, or lent at the Time and Place of such Play to any so Gaming or Betting, &c. shall be void: And where such Mortgages, &c. shall be of Lands, &c. or shall incumber or affect the same, such Mortgages, &c. shall devolve upon such Persons as should or might have or be entitled to such Lands, &c. in case the Grantor thereof had been dead; and as if such Mortgages, &c. had been made to the Persons entitled after the Decease of the Person incumbring: And all Grants or Conveyances made to hinder such Lands, &c. from devolving upon such Person, shall be deemed fraudulent and void.

Any

Any Person playing at Cards, Dice, &c. or Betting and Losing the Value of 10*l.* and paying the same, or any Part, may, within three Months, sue for and recover the Money so lost from the Winner, with Costs, &c. In which Action it shall be sufficient to alledge, That the Defendant is indebted to the Plaintiff, or received for his own Use, &c. the Money so lost and paid, without setting forth the special Matter; and in case the Loser do not sue, any other Person may, and recover the same, and treble the Value, with Costs, against such Winners: One Moiety to the Informer, the other to the Poor of the Parish.

Remedy
where one
loses the Va-
lue of 10*l.*

Every Person liable to be sued, shall answer upon Oath such Bills as shall be preferred against him, for discovering the Sums of Money, or other Thing so won at Play.

Examination
upon Oath.

The Person who shall so discover and repay, shall be indemnified from any further Punishment, &c.

Any Person who shall by Fraud, &c. in playing at Cards, Dice, &c. or by bearing a Share in the Stakes, &c. or by Betting, win any Sum of Money, &c. above 10*l.* at one Time or Sitting, such Person so convicted on Indictment, &c. shall forfeit five Times the Value of the Sums or other Thing so won, and be deemed infamous, and suffer such corporal Punishment as in Cases of wilful Perjury.

Cheating at
Cards and
Dice.

Any two or more Justices may cause such Persons to be brought before them as they have Cause to suspect to have no visible Estate, &c. to maintain themselves by; and

Justices may
examine sus-
pected Per-
sons.

if they do not make it appear, that the principal Part of their Expences is not maintained by Gaming, then such Justices shall require Securities for their Good Behaviour for Twelve Months, and in Default commit them to Gaol.

Recogni-
zance.

Such Persons finding Sureties, and Playing or Betting during the Time for the Value of 20 s. shall forfeit their Recognizance.

Quarrellers
and Assault-
ers.

If any Person shall assault and beat, or challenge to fight any other Person on Account of Money won by Gaming, &c. being convicted thereof, he shall forfeit all his Goods, &c. and suffer Imprisonment during two Years.

Her Majesty's
Palaces ex-
cepted.

This Act shall not extend to prevent any Person from Gaming within any of Her Majesty's Palaces of St. James's or Whitehall, during Her Majesty's actual Residence at either of the said Palaces, or in any other Royal Palace where she shall be resident, so as such Playing be not in any House, &c. the Freehold or Inheritance whereof is out of the Crown, and so as such Playing be for ready Money only.

Game found
upon a Man,
supposes
Proof made.

Concerning the destroying of the Game, of Fishing, Fowling and Hunting, see the Treatise call'd, *The Game Law*; also a later Treatise named, *A Compendium of the Laws*: Where, by the Statute 4 & 5 W. & M. [That if any have Rabber, &c. be found upon a Person not qualified, he shall be convicted;] It was agreed, that [*be found upon*] shall be understood [*Proof made*] that it was found upon him, otherwise there could be no Conviction. *Mod. Cas.* 57. *Gavel*

both

HOW
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HOW far *Gavelkind* Law, which is the Law of *Kent*, and the Privileges of it, are altered by the Statute of 31 H. 8. cap. 3. and 2 & 3 Ed. 6. (a Private Act.)

How far altered by the Statute.

[See the Statute, and Hard. Rep. 325.]

That formerly all Lands were generally *Gavelkind*, but since altered. *Id.* 120.

How formerly.

That *Borough-English* descends to the youngest Son, and his Daughter has good Title. *Ibid.*

Borough-English.

That there is a Difference between *Gavelkind* and *Borough-English*, and the Law takes Notice of both. *Id.* 121.

A Difference.

Good Behaviour.

THE Statute 5 & 6 W. & M. cap. 13. repeals the Statute of 10 Ed. 3. for finding of Sureties for the Good Abearing of him or her that hath a Pardon.

Not after Pardon.

Grants.

BY Statute 3, 4 Ed. 6. 4. An Exemplification of the Inrolment of the King's Letters Patents under the Great Seal, shall be of a good Force to be shewed or pleaded in Behoof of the Patentees, their Heirs, Successors and Assigns, or of any other having any State from, by, or under them, or any of them; or by any other Means under the

Exemplification, good Evidence.

the Date of such Letters Patents, as if the Letters Patents themselves were produced.

Simile.

By Statute 13 *Eliz.* 6. An Exemplification of the Inrolment of the Letters Patents by *H. 8. E. 6.* Queen *M. Ph. & M.* Queen *Eliz.* or any of them since the 4th of *February* in the 27th Year of *H. 8.* or hereafter to be granted by the Queen, her Heirs or Successors, shall be of as good Force to be shewed or pleaded in Behoof of the Patentees, their Heirs, Successors and Assigns, and every other Person having any Estate from by, or under them, or any of them, as well against the Queen, Her Heirs and Successors, and against all other Persons whatsoever, as if the Letters Patents themselves were produced.

No Attornment needful.

That all Grants and Conveyances by Fine or otherwise, of any Reversion or Remainder, shall be good without Attornment.

[See before, Stat. 4 & 5 Ann. cap. 16. for Amendment of the Law.]

Note, That by a late Act, to give further Time for Inrolling such Leases granted from the Crown, as have not been inrolled within the respective Times therein limited; and for making the Pleading of Deeds of Bargain and Sale inrolled, and of Fee-Farm Rents more easy;

Neglect of Inrolments, made good.

'Tis enacted, That all Persons, Bodies Politick and Corporate, having, before the 3d of *March* 1711. made Default or Omision of Inrolment of any Leases or Grants

made

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made by Her Majesty, or Her Royal Predecessors, or any Persons claiming under them, might before the 3d of *March* 1712. bring such Leases to the proper Auditor to be inrolled, who were required so to do, and to put the Rents thereupon reserved in Charge, as if such Leases had been brought to be inrolled within the time limited: And on such Inrolment, and Payment of Arrears of Rent, (and not otherwise) the Lease to continue as if no Forfeiture (for Want of Inrolment) had been made, and the Lessees, &c. are here exonerated and discharged from all Penalties which might be occasioned for Want of such Inrolment.

This Act shall not extend to give Continuance to any Leases, which in any Court have been avoided for Want of such Inrolment. Exception

For supplying a Failure in pleading the Title of Lands, &c. conveyed by Deeds of Bargain and Sale, indented and inrolled according to the Statute 27 *Hen.* 8. where the original Indentures are wanting, enacted, That where in any Declaration, Avowry, &c. any such Indenture inrolled shall be pleaded with a *Profert in Curia*, the Person so pleading shall be allow'd to produce and shew forth by Authority of this Act, to answer such *Profert*, as well against Her Majesty as against any other Person, a Copy of the Inrolment of such Bargain and Sale, and such Copy examined with the Inrolment, and sign'd by the proper Officer, and proved upon Oath to be a true Copy, shall be of the same Force as the said Indentures. Pleading
Deeds of Bargain and Sale.

Where

Concerning
Rents con-
veyed, &c.

Where any Rents intended by 22 *Car. 2.* and 22 & 23 *Car. 2.* to be sold, and sold pursuant thereto, and named in any Deeds Fines, &c. or in any Declaration, &c. by the like Descriptions as the same were named in the Indentures of Sale made by the Trustees for Sale thereof, may serve, and shall be sufficient for the conveying the Title to such Rents under the said Trustees, and shall be allowed in all Courts.

Exception in
pleading
them.

Nothing herein shall extend to allow any Benefit in pleading or deriving Title to any Rent, which hath not been paid within 20 Years next after before the Time of such pleading or deriving Title to the same.

Guardian.

Parents to
appoint
Guardians.

BY 12 *Car. 2. cap. 24.* Since the Court of *Wards* was put down, there is a Power given to Parents to dispose of their Children as they shall think fit, until they come to the Age of 21 Years, or under it; but a Copyholder is not within this Statute, for that belongs to the Lord, or others, according to the Custom of the Manor. 3 *Lev.* 395, 1190.

Spiritual
Court.

The Spiritual Court may appoint Guardians for Infants, who have only a Personal Estate. 2 *Lev.* 162, 217.

Account.

By 4 & 5 *Ann. c. 16.* Account lies against the Executors and Administrators of any Guardian, Bailiff and Receiver.

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Of Appearing and Pleading by Guardian,
and *Prochein Amy*, *vide* 1 Lill. Reg. 489.

To cause Guardians, &c. to produce Persons suspected to be dead, *vide* pag. 5.

[See after *Prochein Amy*.]

H.

Habere Facias possessionem.

Per Holt, Ch. Just. Upon an *Habere fac'* Execution *possessionem*, the Execution is not completed, pleat till the Bailiff deliver the Possession, and is gone. *Mod. Cas.* 115. and *vide* *Lutw.* 1486. how the Sheriff may remove Goods upon this Writ.

Habeas Corpus.

[*Vide ante* *Certiorari*, &c.]

Heir.

HOW to declare against an Heir at Declaration.
Law, according to the Oxford-Act.

Car. 2. 1 *Lev.* 224.

By Statute 29 *Car.* 2. *cap.* 3. An Estate Heir of *Cestuy* descending to the Heir of *Cestuy que Trust*, *que Trust*.
shall be Affers. *Vide ante*, pag. 13.

And

Heir, how
chargeable.

And *vide ante* 78, &c. for Amendment to prevent Frauds in Wills, how an Heir shall be chargeable by 3 & 4 *W. & M. c. 14.* and how he may plead, &c. see also 2 *Lill. Reg. pag. 1*, &c.

Highway-Men.

[*Vide Burglary: And vide Felony.*]

Encourage-
ment for ap-
prehending
Highway-
men.

BY Statute 4 & 5 *W. & M. cap. 8.* Every Person who shall apprehend one or more Highway-men, and prosecute them till they be convicted, shall have from the Sheriff of the County where such Conviction shall be, without paying any Fee, 40 *l.* within a Month after such Conviction, and Demand thereof made, by Certificate under the Judges Hand before whom such Conviction shall be; and if any Dispute arise between the Persons apprehending such Felons, touching their Right to the said Reward, the Judges certifying shall in their Certificate direct the Reward to be paid amongst them in such Proportion as they shall think reasonable: And if any such Sheriff shall die, or be removed before the End of the Month, the Reward being unpaid, the succeeding Sheriff shall pay it within a Month after Demand and Certificate, as aforesaid. The Sheriff in case of Default of Payment, shall forfeit double the Sum he ought to pay, to the Persons to whom the Reward is due; to be recovered by Action of Debt, Bill, Plaint or Information, &c. with treble Costs of Suit.

If any Person shall happen to be killed by such Highway-man, endeavouring to apprehend him, his Executors or Administrators upon Certificate under Hand and Seal of a Judge of Assize for the County (or of two next Justices of Peace) shall receive the said Sum of 40 l. and in Failure of Payment, shall recover double the Sum, with treble Costs of Suit, as aforesaid.

If an Apprehender shall be killed.

The Sheriffs to be allowed the said Sums of 40 l. upon their Accounts, without Fee or Reward.

Allowance.

If upon the Account of any Sheriff, there shall not be sufficient in his Hands to reimburse him, the same shall be paid by the Commissioners of the Treasury out of the Revenue of the Crown, upon Certificate of the Clerk of the Pipe.

How to be paid.

That Persons apprehending, or convicting such Robbers, as a farther Reward shall have their Horses, Furniture, Arms, and other Goods taken with them.

A farther Reward.

Provided, That this Clause shall not take away the Right of any Persons, from whom the same were feloniously taken.

That if any Person, out of Prison, shall commit any Robbery, and shall afterwards discover two or more Robbers, who have or shall commit any Robbery, so as two or more of them shall be convicted, such Discoverer is hereby entitled to their Majesties Pardon: Which shall likewise be a good Bar to any Appeal.

If one Robber discover two or more.

[See concerning Robbers and Highway-men, in the late Compendium of the Laws, 193, 194, &c.]

De homine replegiando.

How this Writ may be prosecuted, &
vide 2 Lill. Reg. 18.

hue and Cry.

27 Eliz. c. 13.
Fresh Pursuit.

THE Hundred where fresh Suit shall cease, shall answer half the Damages to the Hundred wherein the Felony shall be committed, to be recovered in any Court at *Westminster* in the Name of the Clerk of the Peace of the County wherein the Felony was committed: And here the Death or Change of the Clerk of the Peace shall not abate the Suit.

Tax upon
the Hundred,
&c.

When in this Case Damages are recovered against one, or some few Inhabitants of the Hundred, and the rest refuse to contribute thereunto, two Justices of Peace (1 *Quor.*) dwelling within or near the said Hundred, shall, for the Levying thereof, set a Tax upon every Parish within that Hundred: According to which, the Constables and Headboroughs of every Town shall rate the particular Inhabitants, and levy the Money upon them by Distress and Sale of Goods, and deliver the Money levied to the said Justices, or some of them.

Hundred
discharged.

No Hundred shall be chargeable when any of the Malefactors shall be apprehended or when the Action is not prosecuted within one Year after the Robbery committed.

And *vide 29 Car. 2. cap. 7.*

No Hue and Cry shall be deemed legal, Hue and unless the Pursuit be both by Horse and Cry, how. Foot.

No Person robbed shall maintain an Robbery, Action in this Case, unless with all convenient Speed he makes his Robbery known how to be notified, &c. to some near Town, Village or Hamlet, and within twenty Days before the Action brought, make Oath before a Justice of Peace dwelling within or near the Hundred where the Robbery was committed, whether he know the Parties that robbed him, or any of them; and if he know, shall enter into sufficient Bond before the same Justice to prosecute the Person or Persons so by him known, by Indictment or otherwise, according to Law.

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Ideot.

THAT an Ideot, a *Nativitate*, cannot appear by Attorney. 2 *Saund.* 335, &c.

Jeofails.

[*Vide ante* 33, &c. *Tit. Amendment.*]

Indiāments.

[*Vide ante* 12, 94, 95, 150, 152, 171, 284, 299, 300, &c. *Vide ante Feme Covert.*]

References.

See many Special Cases relating to *Indiāments* in the Table to *Mod. Caf. Tit. Indiāments.*

Infant.

[*Vide ante Ability, and Tit. Enfants; also Jeofailes.*]

INfancy in the Plaintiff, who appears by Attorney, is helped by a Verdict for the Plaintiff, by Statute 21 *Jac. I. cap. 23.*

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[*Vide ante* 8, 9, 10, 12, 284, &c. how to be prosecuted at Assizes or Sessions, by 5 Eliz. cap. 4. 21 Jac. 2. cap. 4. *Vid.* 2 Lill. Reg. 61, &c.]

Inquisition.

Where in a Replevin there shall not be another Inquiry by the Statute of further Inquiry. 17 Car. 2. cap. 7. *vide* 1 Lev. 255.

No Exception against a Juror upon a Writ Juror. of Inquiry. *Mod. Cas.* 43.

Intestates Estates.

[*See before* 71, 78, &c.]

Jointenants.

ONE Jointenant may have an Action of Account against the other by 4 & 5 Ann. cap. 16.

Jointure. (*Vide* Dower.)

A Jointure is an Estate made to a Woman by her Husband for the Term of her Life, if she survives him, the same to commence immediately upon his Death; and is mentioned in 27 Hen. 8. cap. 10. And if it be made after Marriage, she may waive it presently after his Death, and demand her Jointure what, and how made.

Dower; but if made before Marriage, she cannot.

Discontinu-
ance.

If a Feme Jointress, Tenant in Tail with-
in Statute 11 Hen. 7. cap. 20. discontinues, the
Reversioner or Remainder-Man may enter.
3 Rep. 51. b.

Forfeiture.

And if she commits a Forfeiture, the Heir
may presently enter. 1 Plowd. 42, &c.

Where not
within the
Statute.

Where the Estate settled for a Jointure
comes from the Ancestors of the Wife, and
is not of the Purchase of the Husband, or
his Ancestors, it is not within Stat. 11 H. 7.
cap. 20.

Jointure in
Fee.

Also, though an Estate in Fee-simple,
conveyed to a Woman for her Jointure, is
not any Jointure within the Stat. of 11 H. 7.
cap. 20. Yet if it be made in Jointure and
Satisfaction of her Dower, it is a Jointure
within 27 H. 8. cap. 10. of Uses. 4 Rep. 3.

Judges.

Certificate.

Where the Judge must make a Certifi-
cate to prevent Costs by 4 & 5 Ann.
cap. 16. to prevent Costs.
[Antea Amendments.]

Judgments.

Judgments to
continue un-
til reversed,
&c.

Note. BY 4 H. 4. 23. That Judgments gi-
ven shall continue; and the Par-
ties for whom they are so given, shall be in
Peace until they shall be reversed by Attain-
der or Error, if any be.

[Vide ante 53, 55, 57, 59, 60, 80, &c.]

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How the Judges ought to give Judgment *4 & 5 Ann. cap. 16.*

In what Judgments the *Capiatur* Fine is taken away. *Stat. eodem.* Of Judgments.

What Judgment shall be given on the bringing Money into Court. *Stat. eodem.*

[*Vide* Amendments.]

Where Judgment shall be upon the Demurrer, or upon the Default. *Mod. Cas. 5.* *Idem.*

Where a Man out of Court may have Judgment against him, though not for him. Against one out of Court.
Idem 10.

When to move in Arrest of Judgment, *id. 24.* Arrest.
Not till the *Pascha* be brought in, *&c.*

How Judgment may be or not be, when the Court is divided. *Idem 203.* Court divided.

If Judgment upon a Warrant of Attor- ney be not entred within the Year, it can't be without Leave of Court on Motion. If not entred within a Year.
Idem 212.

Judgment by *Nil dicit*, how entred in B. C. *Nihil dicit.*
how in B. R. *Idem 236.*

Time of signing Judgment in B. R. is four Days exclusive of the Day on which the Rule is given: But in C. B. they never give such Rules, but stay till the *quarto Die post*; which is only four Days inclusive. *Id. 241.* Time of signing Judgment.

See several other Matters as to Judgments, in the Table of *Modern Cases.*

Also in *Stiles Pract. Reg. 349.* *2 Lill. Reg. 36.*

When the Plaintiff must have a *Sci' fa'* before Execution on a Judgment; and how he may continue an Execution on the Roll to have a *Sci' fa'*. *2 Lill. Reg. 40.* *Sci' fa'*, how to be sued, and how to be saved.

Judicial Proceedings.

[Vide ante, pag. 12, 13, 30.]

Jurisdiction.

Plea tendred. **P**LEA to the Jurisdiction of an Inferiour Court, tendred after the Court was held, ill, and a Prohibition denied. *Mod. Caf. 146.*

Juris Utrum.

BY *Westm. 1. cap. 24. 13 Ed. 1.* A Writ of *Juris Utrum* shall be granted to try whether Free Alms belong to one Church or another, in case where they are transferred from one Church to another.

Jurors and Juries.

If the Plaintiff proceed not to Trial.

BY Statute 7 & 8 *W. 3. cap. 32.* If at any Time hereafter any Plaintiff or Demandant, being at Issue, shall bring to the Sheriff any Writ of *Venire facias*, upon which a Writ of *Habeas Corpora*, or *Distingas*, with a *Nisi-prius* Issue, in order to try such Issue at the Assizes; and such Plaintiff or Demandant shall not proceed to Trial at the first Assizes after the *Teste* of such *Habeas Corpora*: In all such Cases (other than where Views by Jurors shall be directed) the Plaintiff or Demandant, when he shall think fit to try the said Issue at any other Assizes, shall

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shall sue forth a new Writ of *Venire* directed to the Sheriff in this Form :

Quod de novo Venire facias coram, &c. duode- ve' fa' de novo,
cim liberos & legales homines de Vicineto de A. &c.
quorum quilibet habeat decem librat' Terræ, Tene-
mentor' vel reddituum per Annum ad minus, per
quos, &c. & qui nec, &c.

The Residue after the ancient Manner.

Which Writ being returned and filed, a *Habeas Corpora*, or *Distingas*, with a *Nisi- prius*, shall issue thereupon ; whereupon the Plaintiff or Demandant may proceed to Trial, and so *toties quoties*, as the Case shall require. So also where the Defendant or Tenant shall be minded to bring the Cause to Trial by *Proviso*. Proceedings thereon.

Every Writ of *Venire*, *Habeas Corpora*, or *Distingas*, with a *Nisi-prius*, sued out according to this Statute, shall be good and warrantable by Law, and not erroneous or assignable for Error. Errors prevented.

Where there shall be Occasion for a *Tales* by Vertue of the Statute, the Sheriff, or other Minister to whom it shall appertain to return the *Tales-Men*, shall return Freeholders or Copyholders of the County where the Cause is to be tried, who shall be returned upon some other Pannel to serve at the same Assizes, and then attending, to serve upon such *Tales* ; and the Plaintiff or Defendant may have his Challenge to the Jurors so named, in such wise as if they had been impannelled upon the *Venire* : And the Judge of Assize shall and may proceed to

Tales to be
Freeholders
or Copy-
holders.

try the Issue with these *Tales-Men*, so newly added by Virtue of this Act, as he might have done if all the Jurors returned on the *Venire* had appear'd. And every such Trial shall be good in Law.

Fine upon
them.

And in case any Freeholder or Copyholder so returned on the *Tales*, being present at such Return, shall refuse to appear when called, or after Appearance shall willfully withdraw himself, the Judge of Assize, who awarded such *Tales*, shall and may fine him.

Constables,
&c. to return
the Names of
qualified Per-
sons.

All Constables, and Headboroughs of Towns in each County, shall Yearly at the General Quarter-Sessions of the Peace, in the Week after the Feast of St. Michael, return and give a true List in Writing of the Names and Abodes of all Persons within the respective Places for which they serve, qualified to serve on Juries between the Age of 21 and 70 Years; which List they shall deliver to the Justices, and they shall cause the Clerk of the Peace to deliver a Duplicate thereof to the Sheriff of the County or his Deputy, on or before the First of January next following, and cause the said List to be fairly entred in a Book, and kept among the Records of the Sessions. And no Sheriff shall impanel or return any Persons to serve in any Jury at the Assizes, Gaol-delivery or Sessions of the Peace, that shall not be named in the said List. Constable, or Headborough, failing to make such Return as aforesaid, shall forfeit the Penalty of $\text{5}l$ to the King.

Every

Every Summons of Persons qualified to
 Serve on Juries, shall be made by the Sher-
 iff or his Officer at least six Days before,
 shewing to the Person the Warrant under
 Seal of the Office, wherein he is nominated
 to serve: And in case such Juror to be sum-
 mon'd be absent from his usual Habitation,
 a Note in Writing under the Hand of such
 Officer, to that Effect, shall be left at his
 Dwelling-house with some Person there in-
 habiting.

Summons to
 be by the
 Sheriff, &c.

The Return to the Justices shall be a good
 Excuse for the Sheriff, if he summons one
 who is not qualified; and if any Action be
 brought thereupon, the Sheriff may plead
 the General Issue, and give this Act in Evi-
 dence; and if the Plaintiff be nonsuited,
 discontinue his Action, or a Verdict for the
 Defendant, the Plaintiff shall pay treble
 Costs. And if the Sheriff, his Deputy or
 Bailiff, shall summon any Freeholder or
 Copyholder otherwise than aforesaid, or
 neglect his or their Duty, or excuse any
 Person for Favour or Reward, or allow of
 any Exemption to any Person under the
 Age of 70 Years; such Sheriff, his Deputy
 or Bailiff, shall forfeit the Sum of 20 l. to
 such Party grieved, or who else shall sue for
 the same, in any Court of Record at West-
 minster.

If one return-
 ed not quali-
 fied.

Treble Costs.

After the 24th of June 1696. None shall
 be return'd to serve on any Jury at the As-
 sises, Gaol-delivery, or Sessions of the Peace
 for the County of York (the City of York,
 and Town of Kingston upon Hull, excepted)
 above once in four Years; and every Sheriff
 of

For the
 County of
 York.

of the said County for the Time being shall keep a Register of such Persons as have served on Juries, wherein their Abodes, and Times of Service, shall be alphabetically entred; which Book shall be from Time to Time delivered over to the succeeding Sheriff, within ten Days after he shall be sworn. And every Jury-man having served at the Assizes; Gaol-delivery or Sessions, may repair to the Sheriff, or Under-Sheriff, to have his Name entred in the said Register, of which he shall, upon Request, have a Certificate *gratis*.

To serve on
the Grand
Inquest.

From henceforth only one Pannel, consisting of 48 Freeholders and Copyholders, and no more (each Person having fourscore Pounds Land *per Ann.*) shall be return'd to serve on the Grand Inquest; and no more than 10 Pannels of 24 Jurors in each, shall be return'd in Civil Causes at any Assizes for the County of *York* (except only where special Juries are directed by Rule of Court) and at no Sessions of Peace for the said County, or any of the Ridings within the same, shall be returned above 40 Persons to serve either upon the Grand Inquest, or otherwise.

Middlesex.

From henceforth, the Inhabitants of the City of *Westminster* shall be exempted from serving in any Jury at the Sessions of the Peace for the County of *Middlesex*.

Continuance.

The Act of 4 & 5 *W. & M. cap. 24.* As to so much thereof as relates to the Returning of Jurors, shall be in force for 7 Years, from 1 *May* 1696. and from thence to the End of the next Sessions of Parliament.

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This Act, or the last mentioned Act, shall *London and Middlesex.*
not give or require any longer Time for the
summoning Juries that are to try Issues
joined, and triable in *London*, or County of
Middlesex, than was by Law required before;
nor any longer Time for the Return of any
Writ, Precept or Process of *Venire facias*,
Habeas Corpora or *Distringas*, than was by Law
required before.

This Act shall not extend to the City of *London, &c.*
London, nor to any other County of any
City or Town within this Realm, nor to
any Town Corporate that hath Power by
Charter to hold Sessions of Gaol-delivery,
or of the Peace.

[See after.]

This Act is made perpetual by 1 *Annæ*,
cap. 13.

By Statute 3 *Ann. cap. 18.* That if any County of
Sheriff of the County of *York*, after the 1st *York.*
of May 1705. during the last mentioned Act,
refuse or neglect to keep a Register as the
said Act requires, or to enter the Names of
Persons serving as Jurors at the Assizes, or
Quarter-Sessions for the County or Ridings,
(while he shall be Sheriff) their Additions,
and Time and Place of Service, (as is by
the said Act directed) or within ten Days
after the succeeding Sheriff sworn, to deli-
ver him the Books, and Registers made, as
well in his Year, as those made four Years
before, and delivered over to him by his
Predecessors Sheriffs, or to make and deli-
ver such Certificate *gratis*.

Then

Penalty on
the Sheriffs.

Then every Sheriff so refusing or neglecting in all or any the said Cases, shall forfeit the Sum of 100 *l.* One Moiety to Her Majesty, the other to the Persons that sue for the same in any the Courts at *Westminster*.

Persons not
to be sum-
moned.

If any Sheriff of the said County, Under-Sheriff or Bailiff, knowingly summon or return any Person to serve at any the said Assizes or Sessions, who within four Years before such Summons or Return have served, shall upon producing such Certificate to the Person summoning, Sheriff, Under-Sheriff or Deputy, discharge the said Summons or Return, and thereof give Notice to the Party summoned six Days before such Assizes or Sessions; then the Sheriff, Under-Sheriff or Person summoning, or refusing to discharge, shall forfeit to the Party summoned 20 *l.* to be recovered as aforesaid, with full Costs. 2. If this be not lately altered.

Justices War-
rants to the
Chief Con-
stables, &c.

The Justices of Peace for all Counties of *England* and *Wales*, shall Yearly, during this Act, at the Quarter-Sessions next after the 24th of *June*, issue Warrants under the Hands or Seals of two or more of them, to the Chief Constables of the Hundreds, requiring them to issue their Precepts to the Constables, Tything-men, &c. within their Hundreds, requiring them to meet the said Chief Constables in fourteen Days after the Date of such Precept, at some Place in the Hundred, where the Constables, &c. shall make a List signed by them, of the Names and Places of Abode of all Persons within the respective Places they serve, qualified to serve on Juries, according to the Act of

W. & M. with their Titles and Additions, between 21 Years of Age and 70, as by *W. & M. cap. 32.* is directed.

Which List the Constable, Tythingman, &c. Yearly at the Quarter-Sessions, in the Week after *Michaelmas*, on the first Day the said Sessions shall be held, shall give to the Justices there in open Court; every Constable of the Hundred failing to issue his Precept, to forfeit 10*l.*

And Constable, Tythingman, &c. failing to meet, and failing to make a List, and give in the same in open Court, as aforesaid, to forfeit 5*l.*

And every High Constable, Constable and Tythingman offending, to be prosecuted at the Assizes, Sessions of Oyer and Terminer, Gaol-delivery and Peace. And for the better Observance of this Act, and 4 & 5 *W. & M. cap. 24.* and 7 *W. & M. cap. 32.* the Justices at the General Quarter-Sessions, held after the 24th of *June*, shall cause the said several Acts to be read in open Court.

By Statute 4 & 5 *Ann. cap. 16.* *Venire out* of Courts of Record at *Westminster*, shall be awarded of the Body of the County, except in Appeals and Indictments of Felony and Murder, and Indictments and Presentments of Treason, and in Writ, Bill or Information on Penal Statutes.

Courts at *Westminster* may order special Writs of *Habeas Corpora*, or *Distringas*, to cause six or more Jurors to have the Matters in question shewn them by two Persons named in the Writs appointed by the Court, and the Sheriff to return the View.

Justices

List by the Constables, &c.

Penalty.

Acts to be read in open Court.

Vs' fa' of the Body of the County.

View by Jurors.

Justices of Assize.

20 R. 2. c. 3.
Justices of
Assize.

NO Lord, nor other, shall sit upon the Bench with the Justices of Assize in Pain of great Forfeiture to the King, and the Justices there commanded not to suffer it.

Justices of Peace.

THE first Appointment of them was by Statute 1 Ed. 3. cap. 16.

See several Cases concerning their Orders, &c. in the Table to *Mod. Cases*; and 2 *Lill. Reg.* 69.

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Lease, Lessor and Lessee.

[*Vide ante* 71. according to 29 Car. 2. c. 3.
Et vide Leases by Bishops, and other Eccle-
 siastical Persons, 244, &c.]

DEBT lies for Tenant *pur auter Vie*, *Tenant pur auter Vie.*
 after the Death of *Cestuy que Vie*, a-
 gainst the Tenant, who ought to
 pay the Rent, *per Stat. 32 H. 8. cap. 37. vide*
Rep. 118. and 29 Car. 2. cap. 3.

By 19 Car. 2. cap. 6. a Person for whose Absence for
 Life an Estate is granted, being absent for 7 Years.
 Seven Years, shall be accounted as dead.
Vide ante 332.

And see the Act of 6 Ann. cap. 18. for the Discovery of
 more effectual Discovery of the Death of the Death of
 Persons pretended to be alive. *Ante, pag. 5.* Persons.

Vide ante 278. concerning Buildings and
 Houses destroyed by Fire.

Where a Lessee for Years of a Manor, Lessee of a
 may grant above his Estate, but not less. Manor.
Mod. Cas. 63.

Ley-gager.

5 H. 4. c. 8.

IN Actions of Debt upon the Arrearage of an Account, feigning (to the Intent to put the Defendants from their Law) that the same was found before their Apprentices or Servants, as Auditors assigned there in, it shall be in the Judges Discretion upon Examination of the Attornies, (or whom else they please) to receive the Defendants to their Law, or to try the same by Inquest.

[*Vide Stil. Reg. 664. 2 Lill. Reg. 444.*]

Libel.

BY Statute 2 H. 5. 3. A Copy of a Libel grantable in the Ecclesiastical Court shall be presently delivered upon the Defendants Apparance.

Limitation.

[*Vide ante Actions limited, pag. 15, &c. and pag. 41, 42. and postea Statutes.*]Seisin 60
Years.

BY Statute 32 H. 8. 2. Seisin in a Writ of Right shall be within 60 Years before the *Teste* of the same Writ.

50 Years.

In a *Mortdancer, Cosinage, Ayal*, Writ of Entry *sur Disseisin*, or any other Possessory Action, upon the Possession of his Ancestors or Predecessor, it shall be within 50 Years before the *Teste* of the Original of any such Writ.

In a Writ upon the Party's own Seisin or Thirty Years Possession, it shall be within 30 Years before the *Teste* of the Original of the same Writ.

In an Avowry or Cognizance for Rent, Forty Years. Suit or Services of the Seisin of his Ancestor, Predecessor or his own, or of any other whose Estate he pretends to have, it shall be within 40 Years before the making of such Avowry or Cognizance.

Formedons in Reverter or Remainder, and Fifty Years. *Writ facias* upon Fines, shall be sued within 60 Years after the Title or Cause of Action accrued, and not after. [*But see after.*]

The Party Demandant Plaintiff, or Avow- Bar. ant, that (upon Traverse or Denier by the other Party) cannot prove actual Possession or Seisin within the Times above limited, shall be for ever after barred in all such Writs, Actions, Avowries, Cognizance, Prescriptions, &c.

Provided, That in any of the said Actions, Attaint. Avowries, Prescriptions, &c. the Party grieved may have an Attaint upon a false Verdict given.

By Statute 1 M. Parl. 1. Sess. 2. cap. 5. The To what Statute of 32 H. 8. 2. shall not exceed to a 32 H. 8. shall not extend. Writ of Right of Advowson, Quare Impedit, Affize of Darrein Presentment, Fure Patronatus, Writ of Right of Ward, Writ of Ravishment of Ward, nor to the Seisor of the Wards, Body or Estate: But the Time of the Seisin to be alledged in such Cases, shall be as it was at the Common Law before the making of the said Statute.

F f

By

Formedon, &c.

By Statute 21 *fac.* 16. All Writs of *Formedon* in Descender, Remainder or Reverter, for any Title or Cause now *in esse*, shall be sued within 20 Years next after this present Sessions of Parliament, and for any Title or Cause hereafter accruing within 20 Years after such Title or Cause so accruing: Otherwise, such Title shall be for ever after barred, and the Party claiming utterly excluded from Entry.

20 Years.

Entry.

None now having any Right or Title of Entry into any Manors, Lands, Tenements or Hereditaments, now held from him or them, shall thereinto enter, but within 20 Years next after the End of this Session of Parliament, or within 20 Years next after any other Title accrued: And none shall at any Time hereafter make any Entry into Lands, Tenements or Hereditaments, but within 20 Years next after his or their Right or Title, which shall hereafter first descend or accrue to the same.

20 Years.

Saving, &c.

The Titles of any Infant, Feme Covert, *Non compos mentis*, one imprisoned, or beyond Sea, are saved, so as they commence their Suit within 10 Years after such Imperfections removed.

Personal Actions.

All Actions upon the Case (other than for Slander), Actions for Accompt (other than such as concern Merchandize), Actions of Trespass, Debt, Detinue, Trover and Replevin, shall be commenced within three Years after this present Sessions of Parliament, or within six Years after the Cause of such Actions or Suit, and not after.

6 Years.

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All Actions of Trespass, of Assault, Battery, Wounding and Imprisonment, shall be commenced within one Year after this Session, or within four Years after the Cause of Suit, and not after. **4 Years.**

All Actions upon the Case for Words, shall be commenced within one Year after this present Session, or within two Years after the Words spoken, and not after. **2 Years.**

Provided, That if in any such Actions Judgment be given for the Plaintiff, and the same be reversed by Error, or a Verdict pass for him, and upon Motion in Arrest of Judgment it is given against him, or if the Defendant be outlawed in the Suit, and after reverse the Outlawry : In these Cases the Plaintiff, his Heirs, Executors or Administrators, may commence a new Action within a Year after such Judgment reversed, or given against the Plaintiff, or Outlawry so reversed, and not after. **Proviso for a new Action.**

The Right of Action in the Cases above-said, is saved to an Infant, Feme Covert, *Non compos mentis*, a Person imprisoned or beyond Sea, so as they commence their Suit within the Times above limited respectively, after their Imperfections removed. **A Saving.**

[*Vide ante* 41, 42.]

That the Justices of Peace their Power, as to the Ordering the Payment of Labourers Wages, is limited by the Statute only to Labourers in Husbandry ; and the Justices have Power to regulate Wages in Abundance of Cases, where they cannot compel Payment, &c. **Justices Order for Payment of Labourers Wages limited.** *Mod. Cas.* 204, &c.

Of pleading the Statute of *Limitations* argumentative, &c. *Id.* 240.

London.

Gavelet.

BY Statute *de Gavelet*, 10 E. 2. The Lords of Rents in *London* may recover them by a Writ of *Gavelet*, in their Hoytings, and in Default thereof the Lands in Demesne.

Errors, &c.
to be redressed.

By Statute 28 E. 3. 10. The Mayors, Sheriffs and Aldermen of *London*, shall cause Errors, Defaults and Misprisions there, to be redressed, in Pain to forfeit for the first Default 1000 Marks, for the second 2000 Marks, and for the third to have the Franchise and Liberty of the City seized: And their Defaults herein shall be inquired of by Inquests of *Kent, Essex, Suffex, Hertford, Buckingham* and *Berks*, as well at the King's Suit, as of others that will complain.

Mayor, &c.
if indicted.

The Mayor, Sheriffs and Aldermen, being indicted, shall be caused by due Process to come before the King's Justices assigned thereunto out of the City, and there shall be made to answer as well to the King as to the Party grieved, and their Trial shall be by foreign Inquests, as aforesaid: Whereupon if they be attainted, the said Pain shall be levied upon them, and the Plaintiffs also shall recover treble Damages.

Constable of
the Tower,
&c.

In the Prosecution of such Suits, the Constable of the *Tower*, or his Lieutenant, shall execute all Processes in the City; which Process shall be by Attachment, Distress and Exigent: And in the King's Case, the Exigent

gent shall be awarded after the first *Capias* returned ; but after the Return of the third *Capias*, at the Suit of the Party.

If they have Lands out of the City, Pro-
cess shall issue against them in the County
where such Lands be, by Attachment and
Distress.

Every of them that appear, shall answer
particularly for himself, as well at the Peril
of him that is absent, as of himself.

This Ordinance shall extend to all other
Cities and Boroughs throughout the Realm :
Howbeit, the Inquests in such Cases shall be
taken by foreign People of the Counties
wherein such Cities and Boroughs are situ-
ate ; and the Pains to be set upon them, shall
be adjudged by the Justices thereto assigned.

Extent of
this Ordinance.

By Statute 1 H. 4. 15. The Penalties of
1000 and 2000 Marks (imposed by the Sta-
tute of 28 E. 3.) shall not be limited to a Cer-
tainty ; but the Penalties shall from hence-
forth be left to the Discretion of the Justices
thereunto assigned, in like Manner as it is
for other Cities and Boroughs.

Penalties un-
limited.

Debt brought in *London* upon the Demise
of Lands in *Jamaica*. *Mod. Cas.* 194.

M.

Mainprize and Bail.

M *Arlb. 52 H. 3. 27.* Albeit a Clerk being upon an Offence against the Crown (after Arrest) let to Bail, or replevied by the King's Command, will not or cannot (by reason of his Clerk's Office) make answer before the Justices, yet shall not those who let him to Bail, or his Sureties, be amerced, so as he appears before the Justices. [*Vide ante*, Bail and Mainprize, 144, &c.]

Mandamus.

Vide Amendment concerning a *Mandamus*, *ante*, pag. 85, &c.

Also see several other Matters relating thereto, in the Table of *Mod. Cas.* Tit. *Mandamus*.

Mesne.

Where a Tenant is distrained by the Chief Lord.

BY Statute *Westm. 2. 9. 13 E. 1.* The Tenant distrained by the Chief Lord, may have a Writ of *Mesne* in the County where he is distrained, against the *Mesne*; who having Land in that County, and not appearing till the Grand Distress, Day shall be

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be given in the Grand Distress, so as two Counties may be holden before the Return, wherein the Sheriff shall proclaim, that he come to answer the Tenant at the Day; at which Day, if he come not, he loseth his Service, and then the Tenant shall answer to the Chief Lord such Services as he ought to have done to the *Mesne*.

The Chief Lord shall not distrain the Tenant, so long as he offers him the Services due; and if the Lord exact more than the *Mesne* ought to do, the Tenant may have such Remedy as the *Mesne* might have had. No Exaction.

Upon a Return, that the *Mesne* hath nothing to be summoned by, an Attachment shall go out, and upon a *Nihil* returned, the Grand Distress with Proclamation, as before. Attachment.

The *Mesne* having no Land in that County, but in another, upon such a Return by the Sheriff, the Party shall have a Writ Judicial to summon the *Mesne* in that County, where it is testified, that he hath Lands; and both there, and in the other County, shall proceed to the Grand Distress, Proclamation and Judgment, as before. Summons.

The *Mesne* coming into the Court, and acknowledging, or being adjudged to acquit the Tenant, and not doing it, the Tenant shall thereupon have a Judicial Writ of Acquittal: Whereupon, if the *Mesne* come in, and the Tenant can aver that a *Mesne* hath acquitted him, he shall be satisfied his Damages, be quit of the *Mesne* and hold of Tenant acquitted.

the Chief Lord. And here also, if the Mesne come not at the first Distress, then another Distress shall go out, Proclamation shall be made, and Judgment had as before.

Extent of
this Statute.

This Statute extendeth only where there is but one Mesne between the Lord that distraineth, and the Tenant, the Mesne also being of full Age, and the Tenant, Tenant in Fee-simple.

Mortgagees.

Vide Amendment for preventing Frauds in Judgments and Mortgages. *Ante* pag. 80, 81, &c.

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Notanter Writ.

THIS Writ is founded upon *W. 2. c. 46.* against such as thrown down Hedges in the Night, built for Inclosing waste Ground, &c.

Non-Omittas.

THIS is a Writ directed to the Sheriff to enter into a Liberty, where he hath made his Warrant to a Bailiff of a Liberty to execute a Process, and he hath made no Return to him of what he hath done.

Nonsuit.

WHERE before Justices of Assize the Parties are adjourned for some Difficulty in Law upon the Matter found; in this Case the Plaintiff shall not be nonsuited, albeit the Verdict pass against him.

Where no
Nonsuit.

2 H. 4. cap. 7.

Unless the Plaintiff named in any Writ, Bill, or Process in *B. R.* or *C. B.* shall put into the Court a Declaration against the Persons arrested, in some Personal Action, or *Ejectione firmæ* of Lands or Tenements, before the End of the Term next following after

*13 Car. 2.
Sess. 2. cap. 2.*
Nonsuit for
want of
Narr'.

A Review of all the Statutes,

after Appearance, then a Nonsuit for Want of a Declaration may be entred against the Plaintiff in the said Courts respectively.

Matter at large.

The Effect of a Nonsuit, is to set the Matter at large again. *Mod. Cas.* 94.

Non-Tenure.

BY Statute 25 E. 3. Stat. 5. 16. By the Exception of Non-Tenure of Parcel, no Writ shall abate, but only for the Quantity of the Non-Tenure which is alledged.

When a special Non-Tenure may be pleaded. *Mod. Cas.* 226.

Nuisance.

Writ of Nuisance.

BY *Westm.* 2. 24. 13 E. 1. A Writ of Nuisance shall be grantable as well against the Alienee, as against the Party that levied it; and when it is against the Party himself, the Writ shall be, *Questus est nobis A. quod D. injuste, &c. Levavit, domum, murum, mercatum, & alia, quæ sunt ad nocumentum, &c.* But when against the Alien, the Writ shall be, *Questus est nobis A. quod B. & C. Levaverunt, &c.*

Vicontiels.

By Statute 6 R. 2. 3. All Writs of Nuisance called *Vicontiels*, shall be made at the Election of the Plaintiff, according to the old Form, or in the Nature of Affizes, determinable before the Justices of the one Bench or other, or the Justices of Affize, to be taken in the Countrey of the Place assigned.

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Defendant was indicted for a Nufance in bringing a great Ship into *Billingsgate-Dock*. *Mod. Caf.* 145.

Per Cur', We never quash Indictments for Nufances; but upon Removal the Fine will be mitigated, *ibid.* and Party ordered to demur, and remove it.

O.

Oaths. (See Officers.)

THE Act of 7 & 8 *W. 3. cap. 24.* requires Persons practising of the Law to take the Oaths, and subscribe the Declaration. Practisers of the Law.

The Statute 7 & 8 *W. 3. cap. 34.* directs, that a Quaker's Affirmation be taken instead of an Oath: Continued by 13 & 14 *W. 3. cap. 4.* Quakers Affirmation.

That 1 *Ann. Sess. 2. cap. 9. Sect. 3.* directs, that Witnesses shall be sworn to give Evidence for Persons indicted of High-Treason, or other Capital Crimes. Witnesses for Defendant in capital Cases.

Another Act, 1 *Ann. cap. 22.* is to declare the Alterations of the Oaths made *in tempore red.* red.

Willielmi 3.

Obligations.

[*Vide ante Bonds.*]

Oecu-

Occupant.

Occupancy is now settled by 29 Car. 2. cap. 3. *Vide ante* 72, 73.

Officers and Offices.

Against selling of Offices.

BY Statute 5 & 6 E. 6. 16. None shall bargain or sell any Office or Deputation or any Part thereof, or receive or take any Money, Fee, Reward, or any other Profit directly or indirectly, or any Promise, Agreement, Bond or Assurance to receive any such Profit for the same; which Office shall concern the Administration or Execution of Justice, or the Receipt, Comptrolment or Payment of any of the King's Money or Revenue, or any Accompt, Aulnage, Auditorship, or Surveying of any of the King's Lands, or any of his Customs; or any Administration or Attendance in any Custom-house, or the Keeping of any of the King's Towns, Castles or Fortresses (being Places of Strength or Defence), or any Clerkship in any Court of Record, in Pain that the Bargainee thereof shall lose his Place, and the Bargainor be adjudged disabled to execute the same: And every such Bargain and Agreement shall be void.

Exception.

Provided, That this Act shall not extend to any Office of Inheritance, for the Keeping of a Park, House, Manor, Garden, Chase or Forest; nor to the two Chief Justices, or Justices of Assize; but that they may grant Offices, as they did before the making

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making of this Act. Also all Acts done by any Officer removeable by Force of this Statute shall be good in Law, until he be removed.

Officers to take the Oaths, &c.

By Statute 25 Car. 2. cap. 2. All Persons that shall bear Office Civil or Military, or receive any Salary or Wages, by any Grant from the King, or shall have Command or Place of Trust from or under him, or from any of his Predecessors, or by their Authority, in *England, Wales, Town of Berwick*, or in his Navy, or in the Isles of *Fersey* and *Guernsey*, or shall be of the Household, or in the Service of the King or the Duke of *York*, who shall reside or be within *London, Westminster*, or thirty Miles of the same, at any Time in *Easter-Term*, in the Year 1673. shall appear before the End of *Trinity-Term* next following, in the Court of *Chancery* or *King's-Bench*, and between the Hours of 9 and 12 in the Forenoon take the Oaths of Supremacy and Allegiance. During which Time of the taking thereof, all Proceedings shall cease; and every of the said Persons and Officers, not having taken the said Oaths in the said Courts, shall on or before the First Day of *August* 1673. at the Quarter-Sessions for that Place where they shall be or reside on the 20th of *May*, take the said Oaths in open Court between the said Hours. And the said Officers shall receive the Sacrament of the Lord's Supper according to the Usage of the Church of *England*, at or before the First of *August* 1673. in some Parish Church upon some Lord's Day.

And

Simile.

And all Persons that shall be admitted into any of the said Offices, or shall receive any Pay or Wages, *ut supra*, or shall be received into any Service or Employment aforesaid, after the first Day of *Easter-Term* aforesaid, and shall reside or be, when so admitted, in *London* or *Westminster*, or within 30 Miles of the same, shall take the said Oaths in the said Courts in the next Term after their Admittance between the Hours above said; and all such Persons to be admitted after the first Day of *Easter-Term*, aforesaid, within three Months after their Admittance.

Certificate.

And every of the said Persons in the Court where he takes the said Oaths, shall deliver a Certificate of his receiving the Sacrament as aforesaid, under the Hand of the Minister and Church-wardens, and shall make Proof of the Truth thereof by two Witnesses upon Oath: All which shall be recorded in the respective Courts.

Neglect.

All Persons neglecting to take the said Oaths and Sacrament, as aforesaid, shall be *ipso facto* disabled to enjoy the said Offices or Employments, or any Profit thereby: And every such Place shall be void.

Disability.

All Persons that after such Neglect shall execute any of the said Offices or Employments, and be convicted thereof in any of the Courts at *Westminster*, or at the Assizes shall be disabled to sue in Law or Equity, or be Guardian to any Child, or Executor or Administrator, or capable of any Legacy or Deed of Gift, or to bear any Office in *England*, *Wales*, or Town of *Berwick*, and shall

shall forfeit 500 l. to be recovered in any of the Courts at *Westminster*.

The Names of all such Persons and Officers aforesaid, as shall take the Oaths aforesaid, shall be inrolled in the respective Courts aforesaid, with the Time of their taking the same: Which Rolls, as for the Court of *Chancery*, shall be publickly hung up in the Office of the Petty-Bagg; and for the *King's-Bench*, in the Crown-Office of that Court; and in some publick Place in every Quarter-Sessions during the whole Term, every Term, and during the whole Time of such Session, for every one to report to, without Fee: And none shall pay above 12 d. for Entry of his taking the said Oaths.

Officers
Names in-
rolled.

If any not bred up from their Infancy by their Parents in the Popish Religion, and professing themselves Popish Recusants, shall educate their Child or Children, or suffer them to be educated in the Popish Religion, they shall be disabled of bearing any Office in Church or State: And all such Children so educated, shall be disabled of bearing any such Office, till they be reconciled to the Church of *England*, and take the said Oaths in the Quarter-Sessions of the Place where they inhabit; and thereupon receive the Sacrament of the Lord's Supper after the Use of the Church of *England*, and obtain a Certificate thereof under the Hands of two of the said Justices.

Papists disabled.

When the Persons concerned in this Act shall take the said Oaths, they shall likewise make and subscribe this Declaration under the

Declaration
to be subscribed.

A Review of all the Statutes,
the same Penalties as by this Act is appointed :

I A. B. do declare, That I do believe that there is not any Transubstantiation in the Sacrament of the Lord's Supper, or in the Elements of Bread and Wine, at or after the Consecration thereof by any Person whatsoever.

Of which Subscription shall be kept the like Register, as of taking the Oaths afore-
said. This Declaration may be made in the
Common-Pleas or Exchequer, per cap. 22.

**Right saved
to Persons
appointing
Deputies.**

This Act shall not take away any Right which any Person hath by reason of his Peerage, or take away any Creation-money or Bills of Impost, or make void any Pension granted by the King for valuable Consideration, for Life, Lives or Years, other than such as relate to any Office, and other than voluntary Pensions; nor make void any Estate of Inheritance granted to any in Hereditaments, not being Offices; nor any Pension granted to any who was instrumental in the Preservation of the King after Worcester Battel, in the Year 1651. nor make void the Grant of any Office of Inheritance or any Salary for executing thereof, so as such Persons having such Offices, appoint their Deputies to exercise them, till themselves shall voluntarily take the said Oaths and receive the Sacrament, and subscribe the said Declaration, and so as such Deputies take the said Oaths, receive the Sacrament, and subscribe the said Declaration

the Officers themselves are appointed to; and so as such Deputies be approved by the King under his Privy Signet.

Peers may take the said Oaths, and make Peers.

the said Subscription, and deliver the said Certificate before the Peers in Parliament, the Parliament be sitting within the Time limited; and in the Intervals of Parliament, in the Chancery.

Any Person forfeiting any Office by such New Grant.

Neglect, may by a new Grant of the same, or any other Office, hold the same, doing all Things required by this Act; so as such Office be not granted to, and enjoyed by some other.

This shall not make any Forfeiture or In-Navy.

capacity by or upon any Non-Commission Officer in the Navy, subscribing the Declaration therein required.

This Act shall not extend to Pensions Exceptions.

granted to the Earl of Bristol, or his Wife, the 16th of July 1669.

This Act shall not extend to the Office of High Constable, Petty Constable, Tythingman, Headborough, Overseer of the Poor, Church-wardens, Surveyor of Highways, or the like; or to any Office of Forrester, or Keeper of any Park, &c. or Bailiff of Lands, or the like, &c.

Offenders against this Act excepted out of the General Pardon, per Stat. 6 & 7 W. 3.

cap. 20. sect. 21.

If an Office described by the Statute Deputation
has a certain Salary annexed to it, De- not within
putation of such Office, reserving a Sum the Statute.

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less than the standing Salary, will not be within the Stat. 5 & 6 Ed. 6. cap. 16. So if the Fees be incertain, and no certain Salary annexed to the Office, reserving a certain Sum out of Fees, will not be within the Statute. *Mod. Cas.* 234.

Deputy's
Remedy for
a Salary.

If one put in a Deputy, without any Allowance of Salary, he has no Remedy but by *quantum Meruit*, and that against his Principal. *Id.* 235.

Orders.

See before the Contents of the Rules and Orders of the Queen's-Bench and Common Pleas, from 118 to 126.

Ordinaries.

Ordinary to
satisfy an In-
testate's
Debts.

BY *Westm.* 2. 19. 13 Ed. 1. Where an Intestate dies in Debt, and the Goods come to the Ordinary to be disposed; in this Case the Ordinary shall satisfy the Debts so far as the Goods extend, in such Sort as the Executors of such Persons should have done in case he had made a Testament.

Process.

By Statute 18 Ed. 3. Stat. 3. cap. 6. Temporal Justices shall not make Inquiries of Process awarded by the Spiritual Judges, saving only the Article in *Eyre*, such as ought to be.

General Ex-
tortions.

By Statute 25 Ed. 3. Stat. 3. 9. The Justices shall not impeach Ordinaries, or their Ministers, upon Indictments of general Extortions or Oppressions, unless they put in certain

ertain, in what Thing, of what, and in
that Manner the Ordinaries or their Mini-
sters have committed Extortion or Oppres-
sion.

Outlawry.

[*Vide ante* pag. 13. 14, &c.]

P.

Pannel.

[*Vide Jurors & Juries.*]

BY Statute 3 H. 8. 12. Pannels returned
by the Sheriff to inquire for the King,
may be reformed by the Justices of
Goal-Delivery, or Justices of Peace (1 Qu.)
before whom such Pannel shall be so return-
ed: And the Sheriff shall return the Pannels
reformed, in Pain of 20 l. to be divided
betwixt the King and the Prosecutor; and
in this Case, the King's Pardon shall be no
bar against such Prosecutor.

Pardon.

AN Abstract of the late Act for the
Queen's most Gracious, General, and
free Pardon, passed *Anno Septimo Annæ*
Reginæ, of Offences committed before the

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19th

Of all Treasons, &c.

Not hereafter excepted.

To 19 April 1709.

Restoration of all forfeited Goods and Chattels.

Tho' after Execution.

19th of *April* 1709. Enacted, That all Subjects of *Great Britain*, all Bodies Politick and Corporate, Cities, Boroughs, Shires, Stewartries, &c. shall be pardoned and discharged of and from all Treasons, Misprisions of Treasons, Felonies, treasonable or seditious Words or Libels, Leasing-making, Misprisions of Felony, seditious and unlawful Meetings, Offences of *Præmunire*, Riots, Routs, Offences, Contempts, Trespasses, Entries, Wrongs, Deceits, Misdemeanours, Forfeitures, Penalties and Sums of Money, Pains of Death, Pains Corporal and Pecuniary, and of and from all Things, Causes, Quarrels, Suits, Judgments and Executions, not hereafter excepted, which by her Majesty in any wise can be pardoned, committed before the 19th of *April*, 1709.

This present General Pardon shall be as effectual for all Offences, not excepted, as if specially named and pardoned; nor shall any Persons, &c. be sued for any Matter done before the 19th of *April* 1709. against the Queen, or the Laws of this Realm, but only for such Causes as be rehearsed in the Exceptions of this Act.

The Queen doth grant and freely give to every one of her Subjects, all Goods, Chattels, &c. forfeited by reason of any Offence committed before the 19th of *April*, not in this Act excepted.

All Grants thereof made by such as have so forfeited the same, and hereby restored, and all Executions against any such after such Forfeiture, shall be of such Force and Effect, as if no such Forfeiture had been.

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All her Majesty's Subjects may, by themselves, or their Attornies, plead this Act for any Thing hereby pardoned, without any Fee, but only 16 *d.* to the Officer or Clerk that shall enter the same. (*Vid post. Gen. Issue.*)

Act to be pleaded, &c.

This Pardon shall be expounded most beneficial and available to the Subject.

If any Clerk of any her Majesty's Courts in *Great Britain* make out any Writ or Process, or any Sheriff, Escheator, &c. after the 13th of *July* 1709. molest any Subject for any Thing pardoned by this Act, he shall forfeit treble Damages to the Party grieved, and 10 *l.* to the Queen, and such Process shall be void.

Forfeiture for Molestation by Process.

Excepted out of this Act,

All Persons now being in the Dominions of the *French King*, other than actual Prisoners.

Exceptions.

All such Persons who are any Ways employed by the *French King*, or in the Service of the Person who, since the Death of the late King *James*, hath taken the Stile and Title of King of *Great Britain*.

Serving the *French King*, &c.

All Treasons committed on the high Seas, or against the Corresponding Act of the 3d of *Q. Anne*, and another Act of the same Parliament, for prohibiting all Trade and Commerce with *France*.

Simile.

All Violations of the Privileges of Ambassadors.

Ambassadors.

All forging and counterfeiting the Great Seal, Privy-Seal, Sign-Manual, &c. counterfeiting the Monies current in this Realm,

Forging of the Seals or Monies.

Clipping, Washing, Filing, &c. any the said Monies, or Making or Mending any Tool to be used in Coining.

Counterfeit Money.

All bringing into this Realm counterfeit Money made out of this Realm; and all Misprisions and Concealments of the Offences before excepted.

Escapes.

All Escapes of Prisoners, whereupon Judgment hath been given against any Officer.

Murders, Petit-Treasons, &c.

All Murders, Petit Treasons, wilful Poisonings, and all Slaughters of forethought Felony, wilful burning of Houses, or Stacks of Corn, or Barns with Corn, and Accessories.

Robberies and Piracies.

All Robberies and Piracies upon the Seas, all procuring and abetting such Offenders, and receiving them or Goods taken by Piracy.

Mutiny.

All Offences contrary to the Act of 13 Car. 2. for establishing Articles and Orders for the Navy; and also all Offences contrary to the Mutiny Acts of 6 and 7 Anne.

Burglaries, &c.

All Burglaries, and breaking into, and stealing out of any Dwelling-Houses in the Day-time, all Robberies of Churches, and on the Highway.

Sodomy. Rapes, &c.

All Sodomy and Buggery.

All Rapes, and carnal Ravishments of Women.

All wilful taking away, or marrying any Widow, Maid, or Damsel against her Will, or without Agreement of Parents, &c. and Accessories.

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All Perjury, and Subornation, and coun- Perjuries, &c.
terfeiting Deeds, Writings or Records,
&c.

All forging Exchequer Bills, &c. all Of- Forgeries of
fences against the Act of 5 W. & M. c. 7. All Seals, &c.
forging the Common Seal of the Bank of
England, or any sealed Bank Bill, or any
Bank Note, or altering any Indorsement
thereon.

All forging a Secretary of State's Pass, or Of State-
personating any to whom such Pass was Passes, &c.
granted, forging Seamens Tickets, or Exa-
minations or Testimony of Witnesses, tend-
ing to bring any Person in Danger of Life,
and all procuring and counselling the
same.

All Offences committed since her Maje- Offences by
sty's Accession to the Crown, contrary to Popish Recu-
an Act of 25 Car. 2. for preventing Dangers sants, &c.
which may happen from Popish Recusants,
or an Act of 30 Car. 2. for the more effectual
Preserving the King's Person, &c.

All Offences done against an Act of
13 W. 3. for further Security of his Majesty's
Person, &c. or the Act of 1 Anne.

All Offences, &c. contrary to an Act of Against Acts
Parliament (other than using any Craft, My- of Parlia-
stery, &c. by Persons not brought up there- ment.
in Seven Years) or contrary to the Laws
of this Realm, prosecuted to Conviction,
&c.

All Indictments and other Proceedings Indictments
depending concerning Highways and for High-
Bridges, and Issues returned on any such ways, &c.
Process since her Majesty's Accession to the
Crown.

Imbezelm-
ments, &c.

All Offences in imbezelling her Majesty's Goods, Monies, Chattels, Jewels, Armour and Stores of War, since her Accession to the Crown.

All Conditions and Covenants accrued to the Queen.

Quare Impedit.

All Titles, Suits, and Actions of *Quare Impedit.*

Incest.

All Incest, Simony or Dilapidations, &c.

First-Fruits.

All Arrears of First-Fruits, Tenths, Pen- sions, Procurations, Synodals, and other Payments out of any Ecclesiastical Promo- tion.

Conceal-
ments of
Customs, &c.

All Concealment and wrongful Detain- ment of any Customs or Subsidy, Excise, Taxes, or any Debt or Money whatsoever due to the Queen, and all Arrears thereof, and all Corruptions and Misdemeanours of Officers concerning the same, &c.

Converting
Crown
Goods, &c.

All Persons as have taken or converted any Goods, Chattels, Rents or Profits of Lands belonging to the Crown by any Title whatsoever.

Farmers of
the Revenue.

All Arrears of Rent due from any Farmer or Tacksman of any Part of the Revenue, and Arrears of Fee-Farm Rents, &c.

Collectors of
the Land-
Tax, &c.

All Accounts of Collectors, Commissio- ners, Receivers, &c. of any Part of the Re- venue.

Recognizan-
ces.

All Recognizances and other Securities given by any Receiver of the Land-Tax, &c. in *England* or *Scotland*, and their Sure- ries, and all Recognizances and Obligations for Payment of Money.

This

This Act shall not discharge any Recognizance, &c. not yet forfeited; nor any forfeited Recognizance, &c. whereof the Farmers or Tacksmen of any Part of the Revenue ought to receive Benefit; nor any Debt due by Recognizance, &c. to any Persons indebted to her Majesty, which hath been seized in Aid; nor any Debt, whereupon any Estalment or Seizure hath been made, upon which any Thing since the 29th of April 1695. hath been answered and paid; nor to discharge any Forfeitures or Sums of Money due to her Majesty by any Statute; which Forfeitures, &c. since the 29th of April 1695. are converted into the Nature of a Debt; or have been estall'd, or any Seizure made for them, and on which any Thing has been paid since the 29th of April 1695.

Recognizances, and other Forfeitures to the Crown, &c.

Yet Recognizances forfeited since the 29th of April 1695. for Non-appearance, Peace or Good-behaviour, are discharged.

Yet, &c.

And except all Issues, Fines, and Amerciaments lost or assessed since the 29th of April 1695. being totted or received by any Officer before the 29th of September 1709.

Issues and Fines totted.

All Issues, Fines, &c. above 6 l. lost or assessed, which have been affeered, taxed, &c. since the 29th of April 1695.

Affeered or taxed, &c.

All Issues, &c. returned, affeered, &c. in any of her Majesty's Courts in Great Britain since her Accession to the Crown.

Smile.

Yet all other Fines, as well *pro licentia concordandi*, as others, and all Issues and Amerciaments, not herein before excepted, shall be clearly pardoned.

Yet other Fines, &c.

Yet

Yet Estreats
out of the
Exchequer,
&c.

Yet nevertheless, the Estreats of such Fines, &c. as be pardoned by this Act, and which be already estreated out of the Courts of Exchequer of *England* and *Scotland*, and remaining in the Sheriffs, &c. Hands, shall upon the Return of such Estreats be charged and delivered by Scrows into the Pipe-Office, as hath been accustomed; and yet Sheriffs and other Accountants, upon Petition to have Allowance for such Fines, &c. shall have their Petition allowed without Fee.

Offices.

Nor shall this Act restore any Ability to exercise Offices to Persons disabled by any other Laws.

Treasons at-
tainted.

And except all Persons attainted of High-Treason, Petit-Treason, Murder, wilful Poisoning, Burglary or Robbery, and all Executions therefore.

Jesuits, &c.

All Offences committed by Jesuits and Romish Priests against the Statute of the 27th of *Eliz.* and all Convictions of Popish Recusants.

Other Per-
sons except-
ed.

Nor shall this Act discharge Counter and others mentioned in an Act of 1 *Anna*, but the said Counter and others may be kept in Custody during her Majesty's Pleasure, and be further prosecuted for that horrid Conspiracy.

Outlawries.

No Process of Outlawry, at the Suit of any Person Plaintiff, shall be stay'd, unless the Defendant put in Bail, where the Law requires it, and take out a *Scire facias*: Nor shall this Pardon discharge any Outlawry after Judgment, till Satisfaction or Agreement with the Party.

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Persons hereby pardoned may plead the General Issue, General Issue, and give this Act in Evidence, &c.

This Act shall be of as good Force to pardon and discharge any the Premises against such as claim the same by any Grant from the Crown, as against her Majesty.

Partition.

See Amendment relating to *Partition*, ante pag. 88, &c.

And see also, as to Partners of Bankrupts being liable to pay Debts, and perform Contracts, p. 203.

Concerning Part-Owners of Ships, &c. Part-Owners. and where an Action lies against the Part-Owners or Master, for Loss of Goods, Payment of Wages, &c. *Showers Rep.* 13, 30, 105. 3 *Lev.* 219.

Payment.

Concerning Payment after the Day, and Upon Payment before the Action brought, &c. See before, Stat. 4 & 5 *Ann. cap.* 16. for Amendment of the Law, pag. 14. Et vide 2 *Lill. Reg.* 204. ment of Money in Court, &c.

Perjury.

[*Vide ante*, p. 267, &c.]

Pleas and Pleading.

See this Head at large in *Stiles Pract. Reg.* 444. 2 *Lill. Reg.* 174, 175, &c.

Also

Also in 1 & 2 D'Anvers Abridg. in each Particular.

Pledges.

Want of Pledges when Matter of Substance.

Common Pledges supposed to be bail to Actions, &c. if they were omitted, were formerly accounted to be a Want of Substance, 2 Lev. 39. But now they are aided by 4 & 5 Ann. ca. 16. unless set forth particularly for Cause upon a Demurrer.

Pluralities.

When a first Benefice becomes void by taking another.

BY the Act against Pluralities, 21 Hen. 8. ca. 13. a Parson who hath a Benefice with Cure, may not take another Benefice with Cure, without having a Qualification or Dispensation so to do; also the first Benefice becomes void by taking another without a Dispensation, and the Patron may present, Vaugh. Rep. 131.

See this Act fully treated of in *The Compleat Incumbent*, &c.

Poor.

Acts relating to the Poor.

THE Chief Acts of Parliament relating to the Settlement of the Poor, &c. 5 Eliz. cap. 4. 43 Eliz. cap. 2, &c. By 13 & 14 Car. 2. cap. 12. Forty Days shall not make a Settlement in any Tenement under the Value of 10 l. per Annum.

Forty Days limited.

Then by 1 Jac. 2. c. 17. a Proviso was made, limiting how the 40 Days were to be accounted after Notice to the Church-wardens and Overseers.

Again,

Again, by 3 & 4 *W. & M. cap. 2.* the And how to
40 Days were limited to be accounted from be accounted.
the Publication of the Notice in Writing to
be read in the Parish Church or Chapel,
&c. with a Saving to such as should exe-
cute any publick Office for a Year, also for
unmarried Persons lawfully hired for a Year,
&c. or being bound an Apprentice, and inha-
biting in a Town or Parish, &c. And by 8 &
9 *W. 3. cap. 30.* the unmarried Person hired,
must continue in Service for a Year.

These Statutes chiefly belonging to the Justices of
Cognizance of Justices of Peace, are more Peace.
particularly treated of in several Books re-
lating to their Office.

Also in some late Treatises relating to the The Com-
Law of the Poor, and most briefly in a pendium of
small Treatise called, *The Compendium of the* the Law.
Laws, treating of Local Settlements, &c.
In which last Treatise, *pag. 14.* 'tis observed,

That about 1 & 2 of *Queen Anne*, it was
said, That it's a good Cause in an Order of
Sessions to say, That the Party is likely to
become Chargeable to the Parish; or, That
he does not rent a Tenement of 10 *l.* a Year;
and, That they may remove any Man that
does not rent 10 *l.* a Year, let him be worth
never so much; for his having a Freehold of
his own, is foreign; and if he has any, it
ought to come of his Side upon the Appeal.
See this *Rep. in Mod. Cases, fol. 88.*

Where the
Party is like-
ly to become
chargeable to
the Parish.

Again, 'tis therein observed, *pag. 21.* That Refusing to
the Statute of 8 & 9 *W. 2. cap. 30.* has laid receive Ap-
a Penalty of 10 *l.* upon such as refuse to prentices put
receive Apprentices according to 43 *Eliz.* out by the
cap. 2. confirmed by 1 *Jac. 1. ca. 25.* and al- Stat.
so by 3 *Car. 1. cap. 4.* And

The Refusers
shall be com-
pelled to take
him.

And about *Easter Term*, 3 *Ann.* in the *Queen's-Bench*, upon an Indictment, it was held, That a Man shall be compelled to take an Apprentice upon the Statute, notwithstanding the Judges Opinion in *Pyne's Case*, about *Hillary Term* 29 & 30 *Car.* 2. upon an Indictment, *viz.* That such Apprentices were only for Husbandmen. See to the like Effect, *Mod. Cas.* 163. *Dna' Regina vers. Gold.*

Where a Settlement of the Father gains a Settlement for the Child. *Id. Mod. Cases* 87.

Idem Mod. 97,
98.

Concerning
Overseers
Rates.

How the Order for a Rate ought to be, and how the Account; also held, That an Overseer need not advance a Farthing of his own Money, for the Churchwardens and Overseers may make a Rate whether the Parish will or not, and when confirmed by the Justices, may be levied by Distress; and that there ought to be a Monthly Rate, because of the Inhabitants frequent changing of Possessions.

Premunire.

6 E. 1. c. 1.

See the famous Case of a *Præmunire*, *Lalor's Case* in *Davis Rep.* 83. &c.

[See after *Tit. Provision.*]

Prisons and pretended Priviledged Places.

[*Vide ante Arrest.*]

Prisoners to
be actually
detained.

BY Statute 8 & 9 *W.* 3. *cap.* 17. After 1 *May* 1697. all Prisoners in the *King's-Bench* and *Fleet*, on Contempt, *Mesne Process*

cess or Execution, shall be actually detain-
ed within the said Prisons, or the Rules of
the same, 'till discharged by Law.

If after 1 May 1697. the Keeper of any Prison suffer any Prisoner committed on
Mesne Process or Execution to be out of
the Rules, except on a *Habeas Corpus*, or Rule
of Court, it shall be deem'd an Escape.

Escape what.

After 1 May, every Person obtaining
Judgment in an Action of Escape against
the Marshal or the Warden of the said Pri-
sons of the *King's-Bench* and *Fleet*, shall have
not only the Remedies already allowed by
Law, but (if such Judgment was obtained
without Fraud upon a real Debt) the Pro-
fits of the said Marshal or Warden, or some
fix Part thereof, shall be sequestred towards
Satisfaction of the said Debt, with Costs and
Damages.

Profits of
Marshal or
Warden to
be sequestred.

And after the said 1 May, such Marshal
or Warden suing forth a Writ of Error, for
Delay only, shall put in Special Bail, or
no Execution shall be stayed.

Error.

If the Keeper of any Prison take Money
to connive at any Escape, he shall forfeit
5000 l. and his Office.

Connivance.

This Act shall not make void the Securi-
ties given by Prisoners for their Lodgings
without the said Prisons of the *King's-Bench*
and *Fleet*, being within the Rules of the
same.

The Rules.

After the said 1 May, no Retaking shall
be given in Evidence in an Action of Escape,
unless specially pleaded, and Oath made by
the Keeper of the Prison, That such Escape
was without his Consent; but if such Affi-
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Retaking an
Escaper.

daunt prove false, such Keeper shall forfeit 500*l*.

Escape out of Execution.

If after 1 *May*, any Prisoner in Execution escape, the Creditor may retake such Prisoner by any new *Capias*, or may sue forth any other Kind of Execution.

What shall be such an Escape.

Every Keeper's refusing, after one Days Notice, to shew the Prisoner in Execution to the Creditor or his Attorney, shall be judged an Escape.

Note of one in Execution.

Persons desiring to charge any Person with an Action or Execution, shall, at their Request, have a Note in Writing from the Keeper of the Prison, whether such Person be a Prisoner or not, under Forfeiture of 50*l*. and such Note shall be sufficient Evidence.

Mortgages, &c. of the Kings'-Bench and Fleet to be inrolled.

All Conveyances and Mortgages of the Inheritance of the said Prisons of the *King's-Bench* and *Fleet*, and their Appurtenances, and all Leases thereof, and the Titles of the Marshal and Warden, or other Proprietor thereunto, and all Trusts, and Declarations of Trust touching the same, shall be inrolled before the 24 of *June* 1697. viz. That of the *King's-Bench* in the *King's-Bench* Court, and that of the *Fleet* in the *Common-Pleas*, and also all such Conveyances, &c. for the future, within Six Months after executing the same, or else to be void.

The Inheritances and Profits to be answerable.

After the said 1 *May*, the Offices of Marshal of the *King's-Bench* Prison, and Warden of the *Fleet*, shall be executed by the Persons to whom the Inheritance of those Prisons, &c. belongs, or their sufficient Deputies, for whom the Persons having such Inheritances,

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heritances, shall be answerable, and the said Inheritances and Profits shall be subject to make Satisfaction upon Escapes, and the Misdemeanours of such Deputies.

After the said 1 May, any Person having Cause of Action against the Warden of the Fleet, may file a Bill in the *Common-Pleas* or *Exchequer*, and a Rule being given to plead thereto within Eight Days, Judgment shall be signed against the said Warden, if he plead not within Three Days after such Rule is out.

Bill to be filed against the Warden.

After the said 1 May, any Person having Cause of Action against any Prisoner in the Fleet, entring a Declaration, and delivering a Copy thereof to such Prisoner in any personal Action, or to the Turn-key or Porter of the Fleet, after a Rule to plead, to be out at Eight Days, and Oath made before a Judge of the Delivery of such Declaration, may sign Judgment against such Prisoner or Defendant.

Judgment for want of a Prisoners Plea.

After the said 1 May, no Prisoners shall pay Chamber-Rent in the *King's-Bench* or *Fleet* Prisons, longer than while they are actually in Possession of such Chambers, and not above 2 s. 6 d. per Week; and if the Keeper of any Prison take more, to forfeit 20 l.

Chamber-Rent.

After the said 1 May, all Persons having Monies owing from any Person in any pretended priviledged Places, as *White Fryars*, *Savoy*, *Salisbury-Court*, *Ram-Alley*, *Mitre-Court*, *Fuller's Rents*, *Baldwyns Gardens*, *Mountague-Close*, or the *Minories*, *Mint*, *Clink* or *Dead-man's Place*, may, upon a legal Process taken out, require the Sheriffs of *London* and *Mid-*

For Arrests in pretended priviledged Places.

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defex,

Posse Comitatus.

delex, the Head Bailiff of the *Dutchy Liberty*, or the High Sheriff of *Surrey*, or Bailiff of *Southwark*, or their Deputies or Officers, to take the *Posse Comitatus*, and arrest such Person, or seize their Goods upon Execution or Extent: And such Sheriffs or Officers neglecting or refusing, to forfeit to the Plaintiff 100 *l.* And every Person opposing or resisting such Officers, shall forfeit 50 *l.* and be sent to Gaol till the next Assizes, &c. and suffer such Imprisonment, and be set in the Pillory, as the Court shall think fit.

Rescous.

And if any Rescous be made of any such Prisoner, the Persons aiding therein, shall respectively forfeit to the Plaintiff 500 *l.*

Transportation.

Which Forfeiture, with Costs of Suit, not being paid within one Month after Judgment for the Recovery thereof, the Person so refusing or neglecting shall be transported to some of the Plantations for Seven Years; and returning again within the Seven Years, to be guilty of Felony without Benefit of Clergy.

Harbourers of Rescouers.

And the Persons inhabiting within any such pretended priviledg'd Places, harbouring any Person who shall have made such Rescous, shall be transported, as aforesaid, unless they pay the Plaintiff the whole Debt and Costs within one Month after Conviction.

Penalties.

The Penalties in this Act to go, one Half to his Majesty, and the other Half to the Prosecutor.

General Issue, and double Costs.

This Act shall be taken to be a general Law, and not necessary to be set forth in Pleading. Any Person sued for putting it in

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in Execution, may plead the General Issue, and give the Act in Evidence; and if upon a Verdict, Discontinuance or Demurrer, Judgment pass for the Defendant, he shall have double Costs.

Saving to *Martha Johnson* Widow, and her Children their Claim to the Houses and Shops belonging to the *Fleet*. And this Act not to lessen the Security for Money out of the Marshalship of the *King's-Bench* Prison, made by *William Lenthall* Esq; to Sir *John Cutler* Bar. deceased, or to his Executor *Edmund Boulter* Esq;

A Saving to some Persons out of the Marshalship. &c.

And saving to *Anthony Smith* Mariner, his Heirs, &c. their Claim to the Office of Warden of the *Fleet*, or to the Prison or Houses and Shops thereto belonging, after a Mortgage made thereof by *Thomas Bromhall* unto *Henry Norwood* Esq; with a Proviso for *Thomas Norwood*, surviving Executor of *Henry Norwood*, touching a Mortgage of the said Office of Warden for 2153 l. And for *John Clemens* Gent. for a like Mortgage for 2299 l.

Simile out of the Office of Warden.

All Deputations, &c. made heretofore by *William Lenthall* Esq; of the said Office of Marshal of the Marshalsea of the *King's-Bench* Prison, are declared void; and all succeeding Marshals shall be appointed by the said *William Lenthall*, with the Consent of *Edmund Boulter* Esq; till the Debt owing to the said *Edmund Boulter*, as Executor to the said Sir *John Cutler*, be satisfied.

Succeeding Marshals, until, &c.

By Statute 1 An. 2. cap. 6. If any Person committed, rendred or charged in Custody

Judges to grant out Scape-Warrants.

Commitment
of Escapes.

Exception.

Sheriffs to
give a Note.

And be an-
swerable.

in the *Queen's-Bench* or *Fleet* in Execution, or *Mefne* Procefs or Contempt, shall go at large, upon Oath thereof in Writing before a Judge of that Court, where the Action, Judgment or Execution were, or where the Party was committed or charged, such a Judge is required to grant one or more Warrants, reciting the Action, Execution or Contempt with which such Person stood charged, which Warrants shall be in force in all Places in *England*, *Wales*, and Town of *Berwick*, directed to all Sheriffs, Mayors, Bailiffs, Constables, &c. in their respective Precincts, to retake and commit such Person escaped to the Common Gaol of the County, where retaken, there to remain without Bail or Removal, until Satisfaction be made of the Debt, or discharged by due Course of Law.

Except such a Person be charged with Treason or Felony, or other Crime or Cause in behalf of her Majesty, her Heirs and Successors: And if the Person be removed in such behalf to another Goal, he shall be charged in such a Goal with all the Cause he was charged in the Gaol from whence removed.

And every Mayor and other Officer, after Delivery of the Prisoner so retaken to the Sheriff, shall take a Note from the Sheriff, testifying the Receipt of such Prisoner. And every Sheriff, after the Execution of such Warrant, shall make Return thereof to the Court, which shall be entred and filed.

And the Sheriff shall answer for his Escape, as in case of any other Escape.

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The Bail in any of Her Majesty's Courts *The Relief*
at *Westminster*, for any Person so retaken, *for Bail.*
may prosecute out of such Court a Writ to
such Sheriff, commanding him to keep such
Prisoner in Discharge of his Bail; which
Writ shall be return'd, and the Delivery of
such Writ to the Sheriff shall be deem'd a
Render in Discharge of the Bail.

And if the Sheriff, or his inferior Officer, *If such Pri-*
suffer the Prisoner render'd to escape, they *soner escapes.*
and every one of them shall be liable, as the
Marshal of the *Queen's Bench* or Warden of
the *Fleet* are for such Escapes.

The Sheriff upon Request, and for the *Sheriff to*
usual Fees of Returns of Actions, shall make *make Re-*
Return, and certifie the Time of the Re- *turns, in or-*
ceipt of such a Writ, and whether the Pri- *der to a Red-*
soner was then in his Custody, and in De- *didit se.*
fault shall forfeit 50 l. to be recover'd in any
of Her Majesty's Courts of Record at *West-*
minster; and upon such a Return, the Court
shall cause a *Reddidit se* to be enter'd on the
Bail-piece.

This Act shall be adjudg'd a general Law, *General Is-*
and shall be construed most beneficially for *sues and tre-*
preventing Escapes; and Persons sued for *ble Costs.*
putting it in Execution, may plead the ge-
neral Issue, and give it in Evidence, and if
Judgment be for the Debtor, he shall have
treble Costs.

By Statute 5 *An. cap. 9.* Persons taken by *Commitment*
Vertue of 1 *An. Sess. 1. Stat. 2. cap. 6.* instead *to the She-*
of being committed to the common Gaol of *riff's Gaol.*
the County where taken, shall be commit-
ted to the Prison where the Sheriff keeps
Debtors, subject to the same Rules and Pe-
nalties,

nalties, and in the same Manner in every Respect as if committed to the common Gaol; and in case of Escape, the Sheriff shall be answerable, as in case of any other Escape.

Oath before
Commissioners.

The Judges of the Courts in the last mention'd Act, may grant Warrants upon Oath in Writing, made before Commissioners (under the Seal of the same Court) to take *Affidavits* in the Country, the Oath being first duly fil'd.

Lord's Day.

It shall be lawful to take Persons upon the Lord's Day, by Vertue of Warrants granted on this or the former Act.

Concerning
Prisoners in
Custody, by
Decrees of
Chancery, &c.

If any Person in Custody by Vertue of this or former Act, or otherwise, for not performing any Decree of Court of *Chancery*, or *Exchequer*, whereby Money is decreed, shall escape, then the Persons to whom the Money is decreed, shall have the same Remedy against the Sheriff, as if the Person escaping had been in Custody upon Execution, and recover the same with Costs, in any Action to be brought in any the Courts of Record at *Westminster*.

This Act shall be adjudg'd to be a general Law.

Prisoner.

Act 1711. to
release Pri-
soners.

BY a late Act for Relief of Debtors, it is Enacted, That all Persons in Prison on the 7th of *December* 1711. upon any Process whatsoever for Debt, Damages, or Costs, who shall take the Oath in the Act mention'd, shall be for ever releas'd from their Imprisonment; and a Justice of the Peace may

may, on Petition of the Prisoner, by his Warrant require the Sheriff, or Keeper of any Prison within his Jurisdiction, to bring before the Justices of the Peace at the Quarter-Sessions, to be held 40 Days from the Date of the Warrant, the Body of any Person being in Prison, with the Copy of the Cause he is charg'd with; and such Prisoner shall in open Court subscribe and deliver in a Schedule of his whole Estate, and the Names of his Creditors, and the Sums to them owing, and take the Oath in this Act; which Schedule is to remain with the Clerk of the Peace for the Creditors Information.

The Justice shall give a Writing, importing Notice to all the Creditors of such Prisoner, that he hath granted such Warrant, and that the Prisoner hath petition'd to be discharg'd; which shall be left with, or serv'd upon the Persons at whose Suit the Prisoner shall be imprison'd; and Notice shall be inserted in the *Gazette* 30 Days before such Quarter-Session, &c. and if it be prov'd upon Oath, That Notice was so serv'd, and inserted in the *Gazette*, and that the Petitioner was Prisoner on the 7th of December 1711. and the Oath taken by the Prisoner be not disprov'd, then the Justices shall by their Warrant command the Sheriff, &c. forthwith to set at Liberty such Prisoner, without Fee, which shall be a sufficient Discharge to the Sheriff, &c.

Notice to the Creditors.

Oath by the Debtor.

No Prisoners discharg'd by this Act, shall be at any Time imprison'd by reason of any Debt contracted before the 7th of Decem-ber

Discharge upon shewing a Duplicate.

ber 1711. but upon every Arrest, any Judge of the Court whence the Process shall issue, upon shewing a Duplicate of such Prisoner's Discharge, shall discharge them out of Prison, so as they give a Warrant of Attorney to appear to such Action.

If Sheriff refuse to bring the Prisoner.

Any Sheriff, &c. refusing to bring the Prisoner to the Sessions, in order to his Discharge, shall forfeit to the Prisoner 10*l.* with Treble Costs of Suit.

Perjury.

Any Person wilfully perjuring himself, shall, besides the Penalties now in Force, be committed to the House of Correction for 12 Months, and kept to hard Labour.

Escape.

On Actions of Escape, &c. brought against any Justices, &c. they may plead the General Issue, and give this Act in Evidence, and recover Treble Costs.

Extent of the Act.

The Discharge of any Person hereby, shall not acquit any other from any Debt, or any Part thereof.

Not to any indebted more than 50*l.* &c.

None shall have the Benefit of this Act who stand indebted to the Queen, or who are indebted more than 50*l.* principal Money and Interest to any one Person.

Scotland.

This Act shall not extend to that Part of Great Britain called Scotland.

Exception.

No Person who shall not obtain his Discharge before the 20th of May 1713. shall have any Benefit by this Act.

A Judgment good against Lands, &c.

Notwithstanding the Discharge of such Prisoners, Judgment shall be good in Law against the Lands and Goods, their Wearing Apparel, Bedding, and Tools, only excepted.

Any

Any Person discharg'd by this Act, in ^{If a Scire fac-} case any *Scire facias*, &c. be brought upon ^{be upon} any Judgment obtain'd before the 7th of ^{Judgment.} December 1711. or any Action for any Debt be commenc'd before the 7th of December 1711. may plead in Discharge, That he was actually Prisoner, &c. and truly discharg'd according to this Act, &c. To which the Plaintiff may reply, That he was not actually a Prisoner on the 7th of December, or any other Matter which may shew that he is not entitled to the Benefit of this Act, &c.

Vide ante Tit. Bail 170. concerning the Bail and Prisoner's Discharge upon a poor Prisoner ^{soner dis-} (who formerly had been discharg'd by Act ^{charg'd.} of Parliament) being taken up again, and confessing the Action. Also the said Prisoner was discharg'd after the Bail had surrender'd him.

See also 178. a Prisoner under 100 *l.* was ^{Simile and} discharg'd by the Act, and being taken up ^{special Bail.} again for above 100 *l.* was oblig'd to find special Bail.

See judicial Proceedings *ante*, Page 12, and Page 30. Amendments relating to Law, Processes and Pleadings; and Page 38, &c. The late Act for Amendment of the Law: Also, Page 51, &c. other late Acts relating to Law-Suits, *cum multis aliis in quolibet Titulo, &c.*

Priviledge.

Vide ante Ambassadors: Also Tit. Prisoners and pretended priviledg'd Places.

Procedendo.

How a *Procedendo* is to be sued out, and when, *vide* 2 *Lill. Reg.* 206.

Vide ante Bail.

Process.

Upon In-
dictments.

BY Statute 6 *H. 6.* 1. Upon Indictment of any Person in the *King's Bench* for Treason, Felony, or Trespass, a *Capias* shall be awarded against him, as well as to the Sheriff of the County where he was so indicted, as of the County whereof he is nam'd in the Indictment, returnable (at least) Six Weeks after, before an *Exigend* shall be awarded; and if any *Exigend* shall be awarded, or *Outlawry* pronounc'd before such Return, they shall be void. This Ordinance shall endure as long as it shall please the King.

Or Appeals.

1st *Capias*.

By Statute 8 *H. 6.* 10. Upon every such Indictment or Appeal before Justices of Peace, or other Commissioners, or any Person dwelling in another County than where the Indictment or Appeal was taken, before any *Exigend* be awarded thereupon, after the first *Capias* return'd, another shall issue out against him to the Sheriff of the County where he is suppos'd, by the Indictment, to be most conversant, returnable Three Months after, before the Justices or Commissioners, before whom he was so indicted or appeal'd, where the Counties are holden from Month to Month, but Four Months after, where they are holden from Six Weeks to Six Weeks.

In this Second *Capias* the Sheriff shall be ^{ad Capias, &c.} commanded to take him, if he be in his Bailiwick; but if he cannot find him, then to make Proclamation at Two several Counties before the Return thereof, that he appear at the Return; at which Time, if he come not, an *Exigend* shall be awarded; and every *Exigend* awarded, or Outlawry pronounc'd otherwise, shall be void.

This Statute of 6 H. 6. 1. is confirm'd, ^{Defendant's Remedy.} and an Action is maintainable, by the Party wrongfully indicted or appeal'd against the Procurer thereof, wherein he shall recover Treble Damages, and the Process thereof shall be, as in Trespass *vi & armis*.

This Act shall not extend to Indictments ^{Chester.} or Appeals taken in the County of Chester.

If the Indicttee, or Appellee, happen to ^{Indicttee, &c.} be conversant in the County where the Indictment is found, at the Time of the finding thereof, like Process shall be made against the Person, as heretofore hath been us'd.

By Statute 10 H. 6. 6. The Statute of ^{Certiorari.} H. 6. 10. is confirm'd. When such Indictments or Appeals as are mention'd in the Statute of 8 H. 6. 10. are remov'd by *Certiorari* into the *King's Bench*, like Processes and Returns shall be issued and observ'd in that Court, as the Justices or Commissioners are order'd to issue and observe by the same Statute; and *Exigents* or *Outlawries* otherwise awarded or pronounc'd, shall be void.

By Statute 19 H. 7. 9. Like Process shall be ^{Case.} hereafter had on Actions upon the Case sued
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ed in the *King's Bench*, or *Common Pleas*, as in Actions of Trespass or Debt.

5 R. 2. 7.

By Statute 23 H. 8. 14. Like Process shall be had in every Action hereafter to be brought upon the Statute of 5 R. 2. 7. (which see in *forcible Entry*.) as in Trespass, and like Process in every Writ of Annuity and Covenant, as in Debt.

[*Vide ante Tit. Bail, Days in Bank, Indictments, &c.*]

Prochein Amy.

Prochein Amy
for Default
of the Guar-
dian.

BY *Westm.* 1. 47. 3 *Ed.* 1. If a Chief Lord, being Guardian, make Feoffment of the Heir's Land, the Heir shall forthwith recover it by Affize of *Novel Disseisin* against his Guardian and the Tenant; and the Seisin shall be delivered by the Justices to the next Friend to the Heir (to whom the Inheritance cannot descend), to improve it for the Use of the Heir, and to answer him for the Issues at his full Age, and the Guardian shall lose the Custody of the Thing recovered, and all the Inheritance that he holdeth by reason of the Heir: But if the Guardian be a Mean Lord, he shall lose the Wardship of all, and be grievously punished by the King.

Affize.

If the Infant be carried away, or disturbed by the Guardian or his Feoffee, or any other, so that he cannot sue his Affize, his *Prochein Amy* shall be admitted to do it for him.

Eloiment.

By *Westm.* 2. 15. 13 *Ed.* 1. If an Infant be eloined, so that he cannot sue personally, his

Prochein

Prochein Amy shall be admitted to sue for him.

[*Vide ante* pag. 3, &c. Ability and Non-ability.]

Proclamation.

[*Vide ante* Outlawry, and *vide Tit.* Fines.]

Profert in Curia.

No Advantage for omitting thereof, unless specially shewn for Cause of Demurrer ; *vide ante* 38, &c. Act for Amendment of the Law.

Prohibition and Consultation.

[*Vide ante* pag. 240, 241, &c.]

BY Statute *De Circumspecte agatis*, 13 Ed. 1. Where no Prohibition.
For Penance corporal or pecuniary enjoined for deadly Sin, as Fornication, Adultery, or the like ; also for not fencing the Church-yard, or not repairing the Church, or sufficiently adorning it, a Prohibition lieth not : Nor for Oblations, Tythes, Mortuaries, Pensions, laying violent Hands upon a Clerk, Defamation (when Money is not demanded) nor for breaking an Oath.

By Statute *De Consultatione*, 24 Ed. 1. When Consultation, when.
the Chancellor or Chief Justices (upon Sight of the Libel) conceive that the Plaintiff cannot have Remedy in any Temporal Court, the Plaintiff shall have Consultation, *viz.* the said Chancellor, or Chief Justice, shall write to the Ecclesiastial Judges, before whom

whom the Cause depends, that they proceed therein, notwithstanding the King's Prohibition.

No Prohibition
against
Tythes, &c.

By *Artic. Cler. cap. 1. 9 E. 2.* For Tythes, Oblations, Obventions, or Mortuaries, (when they are propounded under those Names) the King's Prohibition shall not hold Place, albeit for the long withholding of them they come to a pecuniary Estimation: But if an Ecclesiastical Person lodge his Tythes in his Barn, and then sell them for Money, if that Money be demanded before a Spiritual Judge, for this a Prohibition lieth; for by this Sale they are made Temporal.

Aliter upon
a Debate, &c.

Cap. 2. If Debate arise upon the Right of Tythes (having his Original from the Right of the Patronage,) and the Quantity of the same Tythes do amount to a 4th Part of the Goods of the Church, for this a Prohibition lieth: Also if a pecuniary Penance be demanded in the *Court Christian*, a Prohibition lieth: But if a Prelate enjoin Corporal Penance, and the Party afterward commutes for Money, that Money is recoverable in the *Court Christian*, and in that Case a Prohibition lieth not.

Violence
against a
Clerk.

Cap. 3. If any lay violent Hands upon a Clerk, the Amends for the Peace broken shall be before the King, and for the Excommunication before a Prelate; and if Corporal Penance be enjoined, and the Offender will redeem it with Money to be given to the Prelate, or Party grieved, it shall be required before the Prelate, and the King's Prohibition lieth not.

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Cap. 4. Also in Defamations, the Prelates Defamations. may correct, notwithstanding the King's Prohibition.

Cap. 5. No Prohibition shall be granted, where Tythe is demanded out of a Mill newly erected. Tythe-Mill.

By Statute 1 E. 3. Stat. 2. 11. A Prohibition is granted against those, who in the Spiritual Court do sue their Indictors.

By Statute 18 Ed. 3. Stat. 3. 5. No Prohibition shall be awarded but where the King hath Conuzance. Conuzance.

By Statute 45 Ed. 3. 3. A Prohibition (and an Attachment thereupon) shall be granted, where a Suit is commenced in the Spiritual Court for the Tythes of Underwood above 20 Years Growth in the Name of *Sylvæ cedua*. Underwood.

By Statute 50 Ed. 3. 4. No Prohibition shall be allowed after Consultation duly granted, so as the Matter in the Libel be not changed. Not after Consultation.

Where after Sentence, one may come too late for a Prohibition. *Mod. Cas. 252.*

See the *Compleat Incumbent*.

Protection.

BY Statute *De Protectionibus*, 33 Ed. 1. A Challenge shall be entred against a Protection of the King's Servant; and if the Country pass against him that cast the Protection, it shall turn to a Default if he be Tenant; and if he be Demandant, he shall lose his Writ, and shall also be amerced to the King. By

King's Deb-
tor.

By Statute 25 *Ed. 3. Stat. 5. 19.* Notwith-
the King's Protection of his Debtor, other
Creditors may proceed to Judgment against
him with a *Cesset Executio*, until the King's
Debt be paid: And here, if the Creditors
will undertake for the King's Debt, they
shall have Execution against the Debtor,
both for their own Debts, and likewise for
so much as they have paid the King.

Not with
Clause of
Volumus.

By Statute 1 *R. 2. 8.* No Protection with
the Clause of *Volumus*, shall be allowed for
Victuals taken or bought upon the Voyage
or Service whereof the Protection maketh
mention; neither yet in Pleas of Trespass or
Contracts made after the Date of the same
Protection.

Quia profectur-
us.

By Statute 13 *R. 2. 16.* No Protection with
the Clause of *Quia profecturus*, shall be al-
lowed in any Plea whereof the Suit was
commenced before the Date of such Pro-
tection; except in a Voyage where the
King goeth in Person, or other Voyage
Royal, or in the King's Messages. How-
beit, this Act will not infringe Protections

Quia moratur.

with the Clause of *Quia moratur*; and if the
Party protected tarry more than a conveni-
ent Time in the Country without going to
the Service, or return from the Service, the
Chancellor having Notice thereof, shall re-
peal his Protection.

Gaoler.

By Statute 7 *H. 4. 4.* In an Action of Debt
brought against the Gaoler which letteth a
Prisoner escape, a Protection shall not lie.
Where it shall be allowed in *Assumpsit* after
an Exigent, 3 *Lev. 332.*

Provision and Premunire.

BY Statute 25 E. 3. Stat. 5. 22 He that **Provisiott.**
 purchaseth a Provision in Rome for any
 Abbey or Priory, shall be out of the King's
 Protection; and any Man may do with him
 as with the King's Enemy. But this is alter-
 ed by 5 Eliz. 1.

By the Statute of *Provisors*, 25 E. 3. Stat. 6. **Provisors of**
 made to prevent Collations of Benefices in **Benefices.**
England by the Pope to the Provisors or Pro-
 curors thereof, as well Aliens as Denizens:
 And here, the Penalty was Imprisonment
 without Bail, until he should make Fine to
 the King, and Satisfaction to the Party grie-
 ved, if he were taken; but if not, the Exi-
 gent should run against him.

By Statute 27 E. 3. Stat. 1. cap. 1. A Pre- **Premunire,**
munire is granted against such as sue in a Fo- **what.**
 reign Realm, or impeach there any Judg-
 ment given in any of the King's Courts for
 any Matter whereof the King's Courts may
 take Conuzance: The Penalty is, to be out
 of the King's Protection, to forfeit all their
 Lands and Goods, and to be imprisoned, and
 ransomed at the King's Will, if they may be
 bound; but if not, they shall be put in Exi-
 gent, and outlawed.

By Statute 3 R. 2. 3. None shall take a **Alien.**
 Benefice of an Alien, nor convey any Mo-
 ney to him for the Farm thereof, in Pain of
Premunire.

By Statute 7 R. 2. 12. No Alien shall pur- **Benefice and**
 chase a Benefice in this Realm, nor occupy **Premunire.**
 I i the

A Review of all the Statutes,

the same without the King's Licence, in Pain of a *Præmunire*.

Simile.

By Statute 12 R. 2. 15. If any go out of the Realm to procure (by way of Provision) a Benefice within the Realm, he shall be out of the King's Protection, and the Benefice shall be void.

Simile.

By Statute 13 R. 2. Stat. 2, 3. A Confirmation of the Statute of Provisors, 25 E. 3. and if any accept of a Benefice contrary to the said Statute, he shall incur a *Præmunire*, and suffer a perpetual Banishment.

Bulls.

By Statute 16 R. 2. 5. None shall purchase Bulls, or other Instruments from Rome, or elsewhere, in Pain to incur a *Præmunire*. The Crown of *England* is subject to none.

Simile.

By Statute 2 H. 4. 3 & 4. Religious Persons purchasing Bulls from the Pope to be exempted from Obedience or Tythes, shall incur a *Præmunire*.

Pope.

By Statute 7 H. 4. 8. No Provision shall be made by the Pope, nor Licence or Pardon by the King, touching any Benefice then full of an Incumbent.

**Provisions,
and *Præmunire*'s.**

By Statute 3 H. 5. 4. All Provisions made by the Pope, and Licences or Pardons by the King, touching any Benefices full of an Incumbent, shall be void, and the Provisor thereof shall incur a *Præmunire*.

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Quare Impedit.

VIDE ante, pag. 3, 24, 25, &c. also pag. 88, &c. relating to Partitions between Coheirs. See also 2 Lill. Reg. 257, &c.

But see the Doctrine of *Quare Impedit* at large in that excellent Treatise of the *Complete Incumbent*.

R.

Recognisance.

THE Chief Justices of the King's Bench and Common-Pleas, or either of them, or (in their Absence out of the Term) the Mayor of the Staple at Westminster, and the Recorder of London, jointly together, shall have Power to take Recognisances for the Payment of Debts in this Form following:

23 H. 8. c. 6.
Who may
take Recognisances.

*Notuerint universi per præsentes Nos A. B. & The Form:
D. C. teneri & firmiter obligari Joanni Stile
in Cent' libr' Sterling solvendis eidem Joanni aut
suo cert' Attornat' hoc script' ostend' Hæred' vel
Execut'*

A Review of the Statutes,

Execut' suis in tal' Fest' &c. proxim' futur' post dat' present', & si defecero, vel defecerimus in solutione debit' predict', Volo & conced'. [Vel sic. Volumus & concedimus] quod tunc currat super me, hered' & Execut' meos. [Vel, super nos & quemlibet nostrum, Hered' & Execut' nostros] pena in Statuto stapul' de debit' pro Merchandis in ead' emptis recuperand', ordinat' & provis'. Dat. tali die, Anno Regni. Regis, &c. And so it may be either single or double, mutatis mutandis.

Sealing.

Such Obligation shall be sealed with the Seal of the Recognisor or Recognisors ; as also with such a Seal as the King shall appoint for that Purpose, and with the Seal of one of the Chief Justices, or the Seals of the said Mayor of the Staple, and Recorder, and every of the said Justices, and the said Mayor and Recorder shall have the Custody of one such Seal, to be appointed by the King as aforesaid.

Inrolment by the Clerk.

The Clerk of the Recognisances (to be also appointed by the King) or his sufficient Deputy or Deputies, shall write and inroll such Obligations in two several Rolls indented, whereof one shall remain with such of the said Justices, or with the said Mayor and Recorder that take such Recognisance, and the other with the Writer thereof. Also such Clerk, or his Deputy or Deputies, shall be dwelling or abiding in London, and shall not be absent from thence by the Space of two Days, in Pain to forfeit 10 l.

Certificate.

The Clerk or his Deputy (at the Request of the Creditors, their Executors or Administrators) shall certifie such Obligations into the Chancery under his or their Seal.

The

The Recognisees of such Obligations, their Executors and Administrators, shall have in every Point, Degree and Condition, against the Recognisors, their Heirs, Executors and Administrators, such Process, Execution, Commodity and Advantage, as hath been had upon an Obligation of the Statute of the Staple, and shall also pay like Fees for the same.

Recognisees
Remedy.

Here the Recognisor so bounden, or otherwise grieved by such an Obligation, shall have like Remedy by *Audita Querela*, and all other Remedies in the Law, as upon Obligations of the Statute of the Staple.

Fees.

Audita Querela.

Upon the sealing of the Process for the Execution of every such Obligation, the King shall have an Halfpenny in the Pound.

Sealing-Fees.

The Tenant by such a Recognisance, his Executors or Administrators, being outed, shall have like Remedy, as upon an Obligation of the Statute of the Staple.

Tenants Re-
medy.

The Justices, or the Mayor and Recorder's Fee for taking such a Recognisance, is 3 s. 4 d. and the Clerk's Fee is as much, and his Fee for certifying such an Obligation is 20 d. and none of them shall take more, in Pain of 40 l.

Fees.

From henceforth the Mayor or Constable of the Staple shall take no Recognisance of the Statute of the Staple, in Pain of 40 l. except between Merchants, being free of the same Staple, for Merchandize of the said Staple, between them lawfully bought and sold.

Mayor or
Constable of
the Staple.

The Forfeitures abovesaid, are to be divided betwixt the King and the Prosecutor, and

Forfeitures.

and proved by Information, Action of Debt, Bill or Plaint, in which no Effoin, &c. shall be allowed.

Contribu-
tion.

By Statute 16 & 17 Car. 2. cap. 5. When any Judgment, Statute or Recognisance shall be extended, it shall not be avoided or delayed, by Occasion of Omission of any Part of the Lands or Tenements extendible, saving always the Remedy of Contribution, against such Persons whose Lands be or shall be extended out of such an Extent from Time to come.

Heir saved,

Provided, this Act give no Extent or Contribution against any Heir within the Age of 21 Years, during such Minority, further than might have been before this Act.

To what this
Statute ex-
tends.

Provided, this Act extend only to such Statutes as be for Payment of Monies: And to such Extents as shall be within 20 Years after the Statute, Recognisance or Judgment had.

This Act to continue three Years, and from thence to the End of the next Session of Parliament, and no longer.

Made perpetual by 22 & 23 Car. 2. cap. 2.

Of Recogni-
sances taken
in C. B. &
B. R.

In B. R. upon *Nul tiel Record* Recognisance in Cur' C. B. which was taken at a Judge's Chamber, and set forth as if taken in Court: It was agreed, That Recognisances in B. R. are always entred as present in Court, and never mention a Day certain; but in the *Common-Pleas* they make an Entry of a Recognisance entred into at a Judge's Chamber on a Day certain, and there it binds Land from the very Day of the Caption; and a *Sci' Fa'* may be brought upon

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upon it in either County, viz. London or Middlesex. *Mod. Cases*, 42. And *per Cur'*, here was a Variance, being set forth as taken in Court, and the Usage not so entred.

That a Failure of Trial upon a Recognisance for that Purpose, is a Forfeiture of the Recognisance. Forfeiture.

[*Vide ante*, 74.]

Vide ante Amendments as to Judgments, Statutes and Recognisances, 82, 83, &c.

Records.

BY Statute 9 E. 3. 5. Justices of Assize, Gaol-delivery, and Oyer and Terminer, shall yearly at Michaelmas send all their Records and Proseses (determined and put in Execution) into the Exchequer, which the Treasurer and Chamberlains there shall receive under their Seals, and keep them in the Treasury: Howbeit the said Justices shall first take out the Estreats of the said Records and Proseses, to send them to the Exchequer, as they were wont to do.

[*Vide ante* Amendments.]

Mistakes in filing Records rectified, *Mod. Mistakes. Cases* 18.

Upon a Writ of Error, if the Clerk below will certifie the Record wrong, Case lies against him, *Id.* 245. Case lies.

If *Sci' Fa'* recite a Judgment of *Trin.* Term in Debt, and the Tenants return'd plead *Nul tiel Record'*, and a Judgment of *Michaelmas* Term is produced, this is a Failure of Record, *Id.* 257. Failure of Record.

Recoveries.

21 H. 8. 15.
Who may
falsifie a Re-
covery.

Remedy a-
gainst a Ter-
mor.

Recognisan-
ces, &c. not
to be avoided.

Feigned Re-
coveries
where not to
be had a-
gainst Te-
nants in Tail.

A Termor for Years may falsifie a feigned Recovery had against them in the Reversion, and shall retain and enjoy his Term against the Recoveror, his Heirs and Assigns, according to his Lease.

Also the Recoveror shall have like Remedy against the Termor, his Executors, or Assigns, by Avowry or Action of Debt, for Rents and Services reserved upon such Lease, and due after such Recovery, and also like Action for Waste done after such Recovery, as the Lessor might have had if such Recovery had never been.

No Statute of the Staple, Statute-Merchant or Execution by *Elegit*, shall be avoided by such feigned Recovery, but such Tenant shall also have like Remedy to falsifie such Recoveries as is here provided for the Lessee for Years.

No feigned Recovery hereafter to be had by Assent of Parties against any Tenant or Tenants in Tail of any Lands, Tenements or Hereditaments, whereof the Reversion or Remainder at that Time of such Recovery had shall be in the King, shall bind or conclude the Heirs in Tail, whether any Condition or Voucher be had in any such feigned Recovery or not; but that after the Death of every such Tenant in Tail, against whom such Recovery shall be had, the Heirs in Tail may enter, hold, and enjoy the Lands, Tenements and Hereditaments so recovered according to the Form of the

Gift

Gift of Tail, the said Recovery notwithstanding. 34 & 35 H. 8. cap. 20.

And here the Heirs of every such Tenant Heir. in Tail, against whom any such Recovery shall be had, shall take no Advantage for any Recompence in Value against the Voucher and his Heirs.

This Act shall not extend to prejudice Saving to the Lessee or Lessees of such Tenant in Tail Lessees. made by Writing indented, of any Manors, Lands, &c. for 21 Years, or three Lives or under, whereupon the accustomed Rent or Rents is or shall be yearly reserved during the said Term or Terms, but the same Lessee or Lessees shall enjoy his or their Term or Terms, according to the Statute of 32 H. 8. 28. this Act notwithstanding.

All Recoveries had or prosecuted by Agreement of the Parties, or by Covin, against Tenants by Courtesie, Tenants in Tail, after Possibility, &c. for Term of Life or Lives, or of Estates determinable upon Life or Lives, or of any Lands, Tenements, or Hereditaments, whereof such particular Tenant is so seised, or against any other with Voucher over of any such particular Tenant, or of any having Right or Title to any such particular Estate, shall from henceforth, as against the Reversioners, or them in Remainder, and against their Heirs and Successors, be clearly void. 14 Eliz. 8. Concerning Recoveries by Covin against Tenants by Courtesie, &c.

This Act shall not prejudice any Person that shall by good Title recover any Lands, &c. without Fraud, by reason of any former Right or Title: Also every such Recovery had by the Assent and Agreement of the Saving to such as recover without Fraud.

the Person in Reversion or Remainder, appearing of Record in any of the Queen's Courts, shall be good against the Party so assenting.

Vide the Treatise concerning Fines and Recoveries.

Rents.

Remedy for Rents by Executors and Administrators of Tenants in Fee-Simple, &c.

THE Executors or Administrators of Tenant in Fee-Simple, in Fee-Tail, or for Term of Life, of Rent-Services, Rent-Charges, Rent-Secks, and Fee-Farms, upon whom any such Rent or Fee-Farm was due and unpaid at the Time of his Death, shall have an Action of Debt for all the Arrearages thereof against the Tenant or Tenants that ought to have paid them to their Testator, or against the Executors or Administrators of such Tenant or Tenants; and shall also distress for the said Arrearages upon the Lands charged therewith, so long as they continue in the Seisin or Possession of such Tenant in Demesne, or of any other Person proclaiming by or from him, in like manner as their Testator might have done: And the said Executors or Administrators shall likewise for the same Distress lawfully make Avowry upon the Matter aforesaid. 23 H. 8. cap. 37.

Distress.

A Saving to Manors, &c. in Wales.

This Act shall not extend to any Manor, Lordship or Dominion in *Wales*, or the Marches thereof, where the Inhabitants have used Time out of Mind to pay to every Lord, or Owner of such Manors, &c. at their first Entry into the same, any Sum or

Sums of Money, for the Discharge of all Duties, Forfeitures and Penalties where- with the Inhabitants were chargeable to any of their said Lords, Ancestors or Prede- cessors, before their such Entry.

If any Person hath in Right of his Wife any Estate in Fee-Simple, Fee-Tail, or for Term of Life, in any such Rents or Fee- Farms, and the same happen to be due and unpaid in his Wife's Life, such Husband, after the Death of his Wife, his Executors and Administrators, shall have an Action of Debt for the said Arrearages against the Tenant of the Demesne that ought to have paid the same, his Executors or Admini- strators, and shall likewise distrein for the same, and make Avowry, as he might have done if his Wife were living: The like Power hath Tenant *pur autre vie* for Ar- rearages due and unpaid in the Life-time of *Cestuy que vie*.

A Saving to a Husband after his Wife's Death,

Repleader.

BY 32 H. 8 cap. 30. In all Actions after Judgment Issue had, there shall be Judgment gi- ven, notwithstanding any Mispleading, lack of Colour in sufficient Pleading, or Jeofail, Miscontinuance, Discontinuance, Miscon- veying of Process, misjoining of Issue, lack of Warrant of Attorney of the Party against whom the Issue shall be tried, or any other Default or Negligence of any of the Par- ties, their Counsellors or Attornies.

[*Vide ante* Jeofails, pag. 33, &c.]

Provided,

Warrants of
Attorney to
be deliver'd.

Provided, that every Attorney shall deliver, or cause to be deliver'd, his or their sufficient and lawful Warrant of Attorney, to be enter'd of Record for every Action or Suit wherein he is nam'd Attorney, to the Officer or his Deputy, ordain'd for the Receipt and Entering thereof in the same Term, when the Issue of the said Action is enter'd of Record, or before, in Pain to forfeit 10*l.* to the King, and to suffer Imprisonment at the Discretion of the Justices of the Court, where such Action depends.

Repleader
when.

When a Repleader shall be upon an immaterial Issue. *Mod. Caf. 2.*

Where to begin.

Where the Amendment must begin as to Repleader. *Ibid. bis.*

No Costs
thereon.

No Costs on Award of Repleader. Of a Repleader by Common Law, and, when grantable. *Id. 3.*

Parties out of
Court.

No Repleader where the Parties are out of Court by Default. *Ibid.*

If upon De-
mur.

If a Repleader can be upon a Demurrer. *Id. 102.*

Replevin.

[*Vide ante* Avowry, 128, 135, &c.]

Pleading in
Replevin.

HOW many Matters a Defendant or Plaintiff in *Replevin* may plead. [See the Act for Amendment of the Law, *ante* 38, 39.

Damages for
Avowant.

Note, By 21 H. 8. cap. 16. The Avowant for *Damage feasant*, or *Rent*, shall have Damages found by the Jury, if the Cause go for him.

How

How to sue out a Writ of Second Deliv-
erance upon 13 *Ed. 1. cap. 2. Sect. 3. 2 Lill.* Second De-
Reg. 291. See the Book in *Tit. Replevin.* liverance.

Replevin upon the Defendant's being Upon a
cheated in a Bargain of Goods sold to the cheating Bar-
Plaintiff, and which were come to the gain.
Plaintiff's Ware-house. *Mod. Cas. 68.*

That in *Replevin*, if Property be claim'd, Property
and notwithstanding the Party replevy, claim'd.
Trespass will lie. *Id. 69.*

If an Appraisement of the Goods may be Appraise-
in *Replevin.* *Ibid.* ment.

In *Replevin*, Property in a Stranger may Property.
be pleaded in Bar. *Id. 81.*

How the Defendant in *Replevin* may take Variance.
Advantage of a Variance. *Id. 103.*

In *Replevin* for Cattel, and Justification Title and
for *Damage feasant*, how the Plaintiff may Traverse.
derive his Title and traverse. *Id. 158.*

Conuzance as a Distress for Rent; Bar, that Want of Re-
the Cattel escap'd by the Defendant's Ground pairs.
for want of Repairs, and there distrain'd for
Rent. *Id. 198.*

In *Replevin*, *de homine replegiando*, Demur-
rer to an Abatement, for want of an Addi-
tion in the Writ, and a *Respondeas ouster*
awarded, *Id. 84, 85.* and said, There never
is an Addition to any Writ that is *vicontiel.*

In *Replevin* and *Plea in Bar*, with an *absq;* Replication
hoc, *Repl. to Issue*, Demurrer to the Re- concludes in
plication, and concludes in Abatement, Judg- Abatement.
ment final in *B. C.* for the Plaintiff, and
affirm'd in Error. *Id. 102.*

Ref=

Resceit.

Tenant im-
pleaded.

He in Rever-
sion to be re-
ceiv'd.

Days of
Grace to be
given.

Reversioner
to find Sure-
ties.

BY 13 R. 2. c. 17. If any Tenant for Life, in Dower, by the Law of England, or in Tail, after Possibility of Issue extinct, be impleaded, and he in the Reversion come into the Court, and pray to be receiv'd to defend his Right, at the Day that the Tenant pleadeth to the Action or before, he shall be then receiv'd to defend his Right, and after such Receipt, the Business shall be hastened as much as may be by the Law, without any Delay whatsoever of either Side: And therefore here Days of Grace shall be given by the Discretion of the Judges, between the Demandant and the Party so receiv'd, and not the common Day in Plea of Land, unless the Demandant will thereunto consent, lest the Demandants may be too much delay'd, because they must plead to Two Adversaries.

Howbeit, they in the Reversion who so pray to be receiv'd, shall find Sureties for the Issues of the Tenements demanded for the Time that the Demandants be delay'd after the Plea determin'd between the Demandants and Tenants, if the Judgment pass for the Demandant against them in the Reversion, as well where the *Resceit* is counterpleaded, as where it is granted.

Rescue.

Vide ante Arrest, & *vide* Prisons and pretended priviledg'd Places, & *vide postea* Retorts.

Re

Restitution.

BY Statute 21 H. 8. 11. where a Felon robbeth, or taketh away the Money or Goods of any, and is thereof found guilty, or otherwise attainted by the Evidence given by the Party himself, or others by his Procurement; in this Case, the Justices of Goal-delivery, or other Justices, before whom he is so found guilty, or attainted, have Power to award a Writ of Restitution for the Money or Goods so robb'd or taken, in like Manner as if the Felon were attainted at the Suit of the Party in Appeal.

Where Restitution of Goods taken in Execution, shall be or not. *Mod. Cases* 297, &c.

Return of Sheriffs and Bailiffs.

BY *West.* 2. 39. 13 *E.* 1. Such as do fear the ill Execution of Writs by the Sheriff, shall deliver their Writs unto him in open County, or in the Rear-County, and shall take of him or his Under-Sheriff, a Bill, containing the Names of the Demandants and Tenants mention'd in the Writ, and require the Sheriff or Under-Sheriff to put the Seal thereunto, and Mention shall be therein also made of the Day of the Deliverance thereof; and if the Sheriff, or under-Sheriff, refuse to do it, the Testimony of Knights, and other credible Persons there present, that put their Seals to such Bill, shall be taken.

Caution in delivering Writs to Sheriffs to be executed.

If

For preventing a Return
by *Tarde*.

If the Sheriff will not return Writs deliver'd unto him, upon Complaint thereof to the Justices, a judicial Writ shall issue to the Justices of Assize, to enquire by such as were so present, whether they knew of the Deliverance thereof, and an Enquest shall be thereupon return'd; and if it be found by them, that the Writ was deliver'd, Damages shall be awarded to the Plaintiff or Demandant, having Respect to the Quality and Quantity of the Action, and the Peril he might incur by reason of such Delay: And this is to prevent a Return of the Sheriff by *Trade*.

Simile of a
Mandarvi
Ballivo.

And for that the Sheriff sometime returns a *Mandarvi Ballivo* of a Liberty, where there is none such, the Treasurer of the *Exchequer* shall deliver to the Justices in a Roll, all Liberties (in every County) that have Return of Writs; and if the Sheriff return a *Mandarvi Ballivo* of a Liberty not contain'd in the said Roll, he shall be punish'd as a Disturber of the King and his Crown: And if he return a *Mandarvi Ballivo* of a Liberty that hath Return, he shall have a *Non omittas propter aliquam libertatem* to do it, and shall be commanded to warn the Bailiffs thereof to be ready at a Day to be nam'd in the Writ, to answer why they did not execute the King's Precept, when if they come and acquit themselves, that no Return was made to them, the Sheriff shall be condemn'd to the Lord of the Liberty, and also to render Damages to the Party griev'd by such Delay: But if the Bailiffs appear not, or do not acquit themselves, as aforesaid, in every

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ry judicial Writ, (so long as the Plea hang-
eth) the Sheriff shall have a *Non omittas*, &c.

As concerning the Sheriff's Return of *Oyer of the Sheriff's Return of Issues*, if the Plaintiff demand *Oyer of the Sheriff's Return of Issues*, it shall be granted him, and if he aver that the Sheriff might have return'd greater Issues unto the King, he shall have a Writ judicial unto the Justices of Assize, to enquire in the Presence of the Sheriff (if he will be there) what Issues the Sheriff might have return'd from the *Teste* to the Return of the Writ: And when the Enquest is return'd, if he have not before answer'd the whole, he shall be charg'd with the Overplus by Estreats out of the *Exchequer*, and beside, shall be grievously amerc'd for the Concealment: And here Rents, Corn in the Grange, and all Movables, except Horse Harness, and Household-stuff, are compris'd under the Name of *Issues*.

The King commands, that Sheriffs shall be punish'd by the Justices once or twice (if Need be) for such false Returns: Howbeit, with the Third Offence none shall meddle but the King. **Punishment for false Returns.**

The Sheriff must beware of returning a Rescue, for such Answers tend much to the Dishonour of the King: But when the Bailiffs testifie such Resistance, forthwith the Sheriff (all other Business laid aside) taking with him the *Posse Comitatus*, he shall go in proper Person to do Execution; and if he find his under-Bailiffs false, he shall punish them by Imprisonment; but if not, he shall imprison the Resisters, from whence they

K k shall

shall not be enlarg'd without the King's special Command.

Resisters punish'd.

Also in case of Resistance, the Sheriff shall certify the Court of the Names of Resisters, their Aiders, Consenters, Commanders, and Favourers, and by a Writ judicial they shall be attach'd by their Bodies to appear in Court; where, if they be convicted, they shall be punish'd at the King's Pleasure. [See this Statute confirm'd in *Art. Sup. Chartas* 16. 28 E. 1.]

Indentures between Sheriffs and Bailiffs.

By Statute 12 E. 2. 5. An Indenture shall be made between the Sheriff and Bailiff of a Franchise, under their Names, of every Return deliver'd by the Bailiff to the Sheriff; and if the Sheriff change the Return so deliver'd, and be thereof convicted, he shall be punish'd by the King, and yield to the Lord of the Liberty, and to the Party griev'd, double Damages.

Their Names.

Sheriffs and Bailiffs shall set their Names to their Returns, in Pain to be grievously amerc'd to the King's Use.

Sheriffs upon Receipt of Writs, to give the Party a Bill thereof.

By Statute 2 E. 3. 5. At what Time and Place in the County a Man delivereth a Writ to the Sheriff or Under-Sheriff, they shall receive the same, and make him a Bill, according to the Statute of *Westm.* 2. 39. without taking any thing for the same; and if they refuse to make such a Bill, others there present shall set to their Seals, and if the Sheriff or Under-Sheriff return not such Writs, they shall be punish'd according to the said Statute. Also the said Justices of Assize shall have Power to enquire thereof, and to award Damages, having Respect to the

the Delay, and likewise to the Loss and Damage that might happen.

Difference between Proceedings begun Difference as in B. R. and Proceedings brought up by to Returns *Certiorari*, as to Returns. *Mod. Cas.* 268.

Of a Writ of Enquiry returnable *ad Tres Enquiry*. *Trin*, being *Sunday*. *Id.* 148.

Concerning *Sunday* and the Return Days. *Sunday*. *Ibid.* [*Vide ante* Days in Bank.]

That the Calendar is settl'd by Law, and Calendar. Part of it. *Id.* 251, 252.

That if a Writ may not legally be exe- Return Day cuted the Day of the Return, it shall not lost. the next Day. *Id.* 159.

Why Fifteen Days between *Teste* and Re- 15 Days. turn of Process. *Id.* 146.

Remitter & Retraxit.

Action was in the *Common Pleas* upon *Remitter* by several Damages: The Attorney en- Attorney. ter'd a *Remittit Dampna* as to some; and *Retraxit in* upon Writ of Error it was held, the Attor- *propria persona*. ney could well do it, tho' he could not enter a *Retraxit*, for that must be done in Person. *Mod. Cas.* 82.

Riots, Routs, and unlawful Assemblies.

By Statute 27 R. 2. 8. The Sheriffs, and Rioters. all other the King's Officers, shall suppress Rioters, and imprison them, and all others offending against the Peace.

By Statute 13 H. 4. 7. The Justices of Riots to be Peace, or Two of them at least, together suppress'd, with the Sheriff, or Under-Sheriff, shall by and how. the Power of the County suppress Riots, Routs and unlawful Assemblies, arrest the

A Review of the Statutes,

Offenders, and record what shall be done: By which Record of the said Justices and Sheriff, or Under-Sheriff, the Offenders shall stand convict, as by the Statute of 15 R. 2. 2. in case of forcible Entries (which see in Force). And if the Offenders be departed, the said Justices and Sheriff, or under-Sheriff, shall within a Month after make Enquiry thereof, and hear and determine the same according to Law.

To be certify'd, and how.

If upon such Enquiry the Truth cannot be discover'd in Manner aforesaid, then shall the said Officers, within one Month after such Enquiry, certify the Fault, together with the Circumstances thereof, unto the King and his Council: Which Certificate of theirs shall be in the Nature of a Presentment by Twelve: Whereupon the Offenders shall be brought to answer; and those that be found guilty, shall be punish'd at the Discretion of the King and his Council.

Traverse.

If the Offenders traverse the said Certificate, then that, together with the Traverse, shall be sent into the *King's Bench*, there to be try'd.

If the Offenders appear not.

If the Offenders upon the first Precept do not appear before the Council, or in the *King's Bench*, a second Precept shall issue forth; upon which if they cannot be found, or within three Weeks after Proclamation made against them in the next County-Court, after the Delivery of the second Precept, they do not make their Appearance before the Council, in the *King's Bench*, or in the *Chancery*, (in Vacation Time) upon Return of the said Proclamation, they shall stand convict and attainted of the Offence committed. Ju-

Justices of the Peace dwelling near the Place where such Offences shall be committed, and Justices of Assize for the Time they shall be in their Sessions, (in case any be then committed) shall do Execution of of this Act, in Pain of 100 l.

By Statute 2 H. 5. 8. If Default be found in the Justices of Peace or Assize, or in the Sheriff, or Under-Sheriff, touching the Execution of 13 H. 4. 7. at the Instance of the Party grieved, the King's Commission shall go out to enquire as well of the Truth of the Cause and Original Matter, as of the Defaults aforesaid, directed to sufficient Men of the County, at the Discretion of the Lord Chancellor; which Commissioners shall presently return into the Chancery the Inquests and Matters before them found.

Here, during the Sheriff's or Under-Sheriff's remaining in his Offices, the Coroners shall impanel the Jury, each of them having Lands worth 10 l. per Annum at least; and upon each of which for making Default, the Coroners shall return Issues, viz. for the first Day 20 s. for the second 40 s. for the third 5 l. and for every Day after double: And all this the Coroner shall do in Pain of 40 l. But in case the Sheriff or Under-Sheriff, reputed in Default, be discharged of their Office, the new Sheriff shall do that which the Coroners are above enjoined to do, and shall incur like Penalty, if they therein make Default.

The Lord Chancellor, upon Knowledge of any such Offence, shall send the King's Writ to the Justices of Peace, Sheriff and

Justices of Peace, &c.

A Commission in Default of Justices, &c.

Coroners to impanel the Jury.

Chancellor to send the King's Writ

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Under-

A Review of all the Statutes,

Under-Sheriff of the same County, to put the said Statute of 13 H. 4. 7. in Execution, upon the Pain therein contained. But altho' no such Writ be sent, yet shall they not be excused of the said Pain, if they make no Execution of the same Statute.

At the King's
Charge.

A Riot, &c. shall be expressed and enquired of at the King's Charge, which the Sheriff shall discharge by Indenture betwixt the Justices of Peace and him, and shall be answered him again upon his Account in the Exchequer.

Fines, &c.

Persons guilty of heinous Riots shall suffer one whole Year's Imprisonment without Bail; but petty Rioters shall be imprisoned, as shall seem best to the King and his Council; And greater Fines shall be set upon Rioters than in Time past, in Aid and Supportation of the Justices and other Officers in that Behalf.

Assistants to
Justices, &c.

All the King's Liege People, upon Warning, shall be assistant to the Justices, Commissioners, Sheriff, and Under-Sheriff aforesaid, upon Pain of Imprisonment, and to make Fine and Ransom to the King.

Franchises
and Corpora-
tions.

Bailiffs of Franchises shall cause sufficient Men to be impannelled upon such Inquests, if any such be found within their Liberties. And the Ordinances and Pains aforesaid shall extend to Corporations and Liberties, where they have Justices of the Peace within themselves.

Proceedings
upon a Bill
of Com-
plaint.

By Statute 2 H. 5. 9. Upon a Bill of Complaint for any Riot, &c. preferred by the Party grieved, to the Lord Chancellor for the Time being, together with a Suggestion testifying

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testifying the same under the Seals of two Justices of Peace, and the Sheriff of the County, the said Lord Chancellor shall send forth a *Capias* returnable in the *Chancery* at a certain Day, by which, if the Parties offending, or any of them, be taken, they shall be committed to Ward, or left to Mainprise, at the Discretion of the said Lord Chancellor, and shall be proceeded against as the Law requireth: But if the Sheriff return *Non est inventus*, a Writ of Proclamation, (to be proclaimed two County-Court Days) shall go out, returnable in the *King's-Bench* at a certain Day; before which, if they render not themselves, they shall be adjudged convict, and attainted of the Offence suggested.

If the Offence be committed within the County Palatine of *Lancaster*, or other Franchise where there is a Chancellor and Seal, the Lord Chancellor of *England* shall send a Writ to the said Chancellor, commanding him to make such Execution as in this Act is comprised.

Counties Palatine.

By Statute 8 H. 6. 14. Two Justices of Peace of the Counties where Riots are supposed to be committed, shall testifie, that the common Fame runneth in the same Counties of the same Riots, before *Capias* shall be awarded according to the Statute of 2 H 5. 9.

Certificate before *Capias*.

If the Offence be committed within a Liberty where there is a Chancellor and a Seal, upon Information of the Riot, &c. from a Justice of Peace and Sheriff there, the said Chancellor hath Power to award Writs of *Capias*, and Proclamation, as the Chancellor of *England* hath.

Liberties.

Jury by the
Sheriff.

By Statute 19 H. 7. 13. If any Riot, &c. be committed, the Sheriff, upon a Precept directed unto him, shall return Twenty-four Persons, whereof one shall have Freehold within the same County worth 20 s. *per Annum*, or Copyhold worth 26 s. 8 d. *per Ann.* or Copyhold and Freehold together worth 26 s. 8 d. *per Annum*, for to enquire of the said Riot, &c. and shall return Issues upon every Juror making Default, *viz.* for the first Day 20 s. and for the second 20 s. And all this the Sheriff shall do in Pain of 20 l.

If the Riot
be found by
Maintenance,
&c.

If the said Riot, &c. be found by reason of any Maintenance or Embracery of the Jurors, then shall the Justices and Sheriff, or Under-Sheriff, (besides the Certificate they are to make according to the Statute of 13 H. 4. 7.) certify the Names of such Maintainers and Embracers, together with their Misdemeanours, in Pain to forfeit 20 l. apiece; which Certificate shall have like Force of proving the Offence as a Verdict of Twelve Men: And then such Maintainers and Embracers shall forfeit 20 l. apiece, and remain in Prison at the Discretion of the Justices.

Robberies.

See before Tit. *Burglary*, Tit. *Felony*, and Tit. *Hue and Cry*.

See also 1 *D'Anvers Abridgment*, Tit. *Appeal*.

And see a late small Treatise called, *A Compendium of the Laws*.

S. Satisf

S.

Satisfaction.

WHERE the Defendant may bring the Money into Court in Satisfaction of a Debt, &c. by 4 & 5 Ann. cap. 16. for Amendment of the Law, *vide ante* 41.

Scandalum Magnatum.

THIS is an Action brought by a Peer or Nobleman, *Qui tam*, &c. who professes as well for the King as himself, upon the Statute of 12 R. 2. cap. 11.

Qui tam by a Nobleman.

This Statute is also a General Law, of which the Court is to take Notice. 4 Rep. 12. b.

General Law.

Also a Defendant may justify in a *Scandalum Magnatum*, setting forth the special Matter, *Idem* 13, 14.

Justification.

Scire Facias.

BY 17 Car. 2. cap. 8. An Administrator *de Bonis non* may have a *Scire Facias* upon a Judgment after Verdict, against his Tenants, and also against the Survivor.

By Administrator *de Bonis non*.

A *Scire facias* was, *Quare dampna assideri non debent* upon the Statute 8 & 9 W. 3. cap. 11. where the Defendant dies after the Interlocutory

Quare dampna assideri non debent.

cutory Judgment, the Administratrix pleads Judgment recovered, but held no Plea; for she could plead only in Arrest of Judgment, but here she shall not be chargeable with Costs. See 2 *Lill. Reg.* 321.

Costs.

And note, That by 8 & 9 *W. 3. cap.* 11. In all Suits upon a *Sci' Fa'* and Prohibitions, the Plaintiff obtaining of Judgment, or Award of Execution, after Plea pleaded, or Demurrer join'd, shall have Costs. *Vide ante* pag. 51.

Costs.

Amendment of *Sci' Fa'*.

Amendment of a *Scire Facias* where, *vide Mod. Cases* 263. Also see the Table thereof, directing to several Matters relating to *Scire Facias*. *Vide ante* 425. how it may be sued, and how it may be saved.

Seisin.

Upon what Seisins Writs of Right may be brought, according to Statute 22 *H. 8. cap.* 2. &c. and within what Time, *vide ante* *Tit. Limitation*.

Sheriffs and Under-Sheriffs.

[*See before* *Juries and Jurors, &c.*]

Sheriffs to have sufficient.

NONE shall be Sheriff except he have sufficient Land in the County where he is Sheriff, to answer the King and his People.

No Steward, &c. to be Sheriff.

No Steward or Bailiff to a great Lord shall be Sheriff, except he be out of Service, so that he may attend to execute his Office for the King and his People.

By

By Statute 4 E. 3. 9. Sheriffs, Escheators, and Bailiffs of Hundreds and Franchises, shall have sufficient in the Places where they are Ministers, whereof to answer the King and his People in any Case Men complain against them. Sufficiency of Sheriffs, &c.

By Statute 4 E. 3. 4. None shall be Sheriff, Under-Sheriff, Escheator, Bailiff of Franchises, Wapentakes, Hundreds or Tythings, unless he have sufficient Lands in the County whereof to answer the King and his People, if any will complain. Simile of Sufficiency.

By Statute 14 E. 3. 7. No Sheriff shall continue in his Office above one Year, and then another convenient Man shall be chosen in his Place (having Lands sufficient in his Bailiwick) by the Chancellor, Treasurer and Chief Baron, taking to them the Chief Justices, if they be present: And this shall be done yearly at the Exchequer the next Day after All-Souls. *Simile* 28 E. 3. 7, &c. Continuance in Office.

By Statute 42 E. 3. 9. *pars inde*. No Sheriff or Under-Sheriff, or Sheriff's Clerk, shall continue in their Office above one Year. Continuance.

By Statute 1 R. 2. 11. None having been Sheriff for one whole Year, shall be Sheriff again within three Years then next ensuing, if there be other sufficient in the County to answer the King and his People. When not to be Sheriff again.

By Statute 1 H. 5. 4. They who have been Sheriffs Bailiffs for one Year, shall not bear that Office by three Years next following, except in Sheriffwicks inheritable. Simile.

No Under-Sheriff, Sheriff's Clerk, Receiver, or Sheriff's Bailiff, shall be Attorney in Not to be an Attorney, &c.

in any of the King's Courts so long as he bears such Office under the Sheriff.

**Continuance
in Office.**

By Statute 23 H. 6. 8. The Statute of 14 E. 3. 7. 42 E. 3. 9. and 1 R. 2. 11. shall be duly observed, except by Officers in London, and where any hath Freehold or Inheritance in the Sheriff's Office.

Forfeitures.

No Sheriff, or any of his Under-Officers, (except before excepted) shall act contrary to the said Statutes in Pain to forfeit yearly 200 l. And every Pardon granted them in that Behalf, or for the said Forfeiture, and every Patent made for that Purpose, shall be void, notwithstanding the Clause or Word of *Non obstante* be inserted in any of them: And whosoever shall hereafter act by any such Patents, shall be for ever after disabled to bear the Office of Sheriff in *England*.

The Forfeiture abovesaid is to be divided betwixt the King and the Prosecutor.

Fees for Arrests, &c.

By Statute 23 H. 6. 10. No Sheriff shall let to farm his County or Bailiwick, neither shall he, his Under-Sheriff, or any other Bailiff, return upon Inquest any Bailiff, Coroner, Steward, or any Servant of theirs; neither shall they take any Thing for arresting; or for omitting to arrest, save only the Fees that follow, *viz.* for the Sheriff 20 d. for the Bailiff that makes the arrest 4 d. and for the Gaoler (when the Party is committed) 4 d. Neither shall any Sheriff, Under-Sheriff, Sheriff's Clerk, Steward or Bailiff of Franchise, Servant, Bailiff or Coroner take above 4 d. for the Copy of a Pannel.

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Sheriffs and other Officers shall let to Bail Persons by them arrested, upon reasonable Sureties, having sufficient within the County: (Persons in Ward by Condemnation, Exemption, *Capias Utlagatum*, or *Excommunicatum*, Surety of Peace, or committed by Command of the Justices, and Vagabonds refusing to serve, only excepted.)

Letting to Bail.

The said Officers shall take no Bond of any arrested Person, but for Appearance, and to themselves only; and shall not take for it more than 4 *d.* And Bonds otherwise taken (*Colore Officii*) shall be void.

Colore Officii.

Sheriffs shall make Deputies in the King's Courts at *Westminster*, or receive Writs to be delivered unto them.

Deputies.

Sheriffs, Under-Sheriffs, Clerks, Bailiffs, Gaolers, Coroners, Stewards, Bailiffs of Franchises, and all other Officers which do contrary to this Act, shall forfeit for every such Offence treble Damages to the Party grieved, and besides 40 *l.* to be divided betwixt the King and the Prosecutor.

Forfeitures.

Justices of Assize of both the Benches, and of Peace, have Power to hear and determine such Offences.

If the Sheriff return a *Cepi Corpus*, or *Reddidit se*, he shall be chargeable to have the Body of the Party ready at that Day of the Return mentioned in the Writ.

Cepi Corpus returned.

The Warden of the Fleet, or of the Gaol of the King's Palace at *Westminster*, shall not be prejudiced by this Ordinance.

Saving to the Warden, &c.

By Statute 11 *H. 7.* 15. No Sheriff, Under-Sheriff, or Sheriff's Clerk, shall enter into the

Entering Plaints.

the County Court any Plaintiff in the Absence of the Plaintiff or his Attorney, nor have above one Plaintiff for one Cause, in Pain of 40 s. to be divided betwixt the King and the Prosecutor.

Certificate
and Forfeiture.

A Justice of Peace, upon Complaint made, hath Power to examine the abovesaid Officers and Plaintiffs concerning the Premises; and finding any of the same Officers guilty, shall within three Months after certify that Examination into the *Exchequer*, in Pain of 40 s. upon which Examination the said Officers shall be convicted to pay the abovesaid Forfeiture of 40 s. without farther Inquiry.

Summons.

The Defendant in the County-Court shall have lawful Summons, and if the Bailiff be therein found guilty, he shall forfeit 40 s. And here also Examination and Certificate shall be made by a Justice of Peace, as aforesaid.

A Saving to
Bristol.

By Statute 6 H. 8. 18. The Under-Sheriff, and all other Officers of Sheriffs, may continue and execute their Offices within the County of the Town of *Bristol* from Year to Year, in such sort as the like do in *London*, without any Forfeiture, notwithstanding the Statutes of 42 E. 3. 9. and 23 H. 6. 8.

Sheriff not to
be a Justice
of Peace.

By Statute 1 M. Parl. 1. Sess. 2. cap. 8. No Sheriff shall be Justice of Peace during his Shrievalty, notwithstanding the Statute of 1 E. 6. 7. (which see in *Discontinuance of Process*;) and all Acts then done by him as Justice of Peace, shall be void.

Return of
Jurors by
Sheriffs.

By Statute 27 Eliz. 7. No Sheriff, Coroner, or other Person having Return of Writs, shall return any Juror dwelling out of a Liberty,

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Liberty, without the true Addition of the Place of his Abode at the Time of such Return, or some other Addition by which the Party returned may be known; nor any Juror within a Liberty, with other Addition than shall be given by the Bailiff thereof, and his Deputy, under his or their Hand.

No Bailiff of a Liberty or his Deputy, shall return any Juror, or deliver to the Sheriff or his Deputy the Names of any to be returned upon any Pannel or Jury, without the true Addition, under his or their Hand, of their Abode at the Time of such Return, or within one Year before, or some other Addition whereby the Party may be known: Neither shall any Issues go forth against any Person otherwise returned in the original Pannel, or *Tales*. *Vid.* 279. *Yorkshire*.

Simile by Bailiffs of Liberties.

No Sheriff, Bailiff, or other, shall levy any Issues so estreated of any other Person than of such as by the Estreat ought of Right to be charged therewith; in Pain that every Clerk who shall write or deliver, or procure such Estreat to be delivered or put in Ure, and every other Person offending contrary to the Meaning of this Act, shall forfeit five Marks to the Queen, and as much to the Party grieved, to be recovered by Action of Debt, &c.

Levying Issues estreated.

Justices of Oyer and Terminer, Assize and Peace, have Power to hear and determine the Offences aforesaid, and to issue forth Process for levying of the said Forfeitures.

By Statute 27 *Eliz.* 12. Every Under-Sheriff, before he intermeddles with his Office, shall before one of the Justices of Assize, or the

Under-Sheriff's Oath on Penalty.

A Review of all the Statutes;

the *Custos Rotulorum* of the County, or two Justices of the Peace there, (1 *Quor.*) take the Oath of Supremacy, (which see in *Crown*) and also the Oath hereafter written, in Pain to forfeit treble Damages to the Party grieved if he commit any Act contrary to the said Oaths, or either of them.

The Form of the Oath is as followeth:

I A. B. shall not use nor exercise the Office of Under-Sheriff corruptly, during the Time that I shall remain therein; neither shall or will accept, receive or take, by any Colour, Means, or Device whatsoever, or consent to the taking of any manner of Fee or Reward of any Person or Persons, for the Impannelling or Return of any Inquest, Jury or Tales, in any Court of Record for the King, or betwixt Party and Party, above Two Shillings, or the Value thereof, and such Fees as are allowed and appointed for the same by the Laws and Statutes of this Realm; but will, according to my Power, truly and indifferently, with convenient Speed, impannel all Jurors, and return all such Writ or Writs touching the same, as shall appertain to be done by my Duty or Office, during the Time that I shall remain in the said Office.

So help me God.

simile by Bailiffs of Franchises, &c.

No Bailiff of Franchise, Deputy, or Clerk of a Sheriff or Under-Sheriff, shall intermeddle with their several Offices before they have taken the said Oaths aforesaid, (altering only the Terms of Office) in Pain to forfeit 40 l. to be divided betwixt the King and the Prosecutor.

Justices of Assize, and Justices of Peace in Sessions, have Power to hear and determine the Defaults and Offences aforesaid, and upon Conviction, to award Process accordingly.

By Statute 29 *El.* 4. No Sheriff, Under-Sheriff, Bailiff of a Liberty, or any of their Deputies, shall either directly or indirectly take more for serving an Extent or Execution than after 12 *d.* for every Pound under 100 *l.* and 6 *d.* for every Pound above 100 *l.* in Pain to forfeit treble Damages to the Party grieved, and besides 40 *l.* betwixt the Queen and the Prosecutor.

Fees for Extents or Executions.

This Act shall not extend to Fees of Executions within Cities or Corporations.

By Statute 43 *Eliz.* 6. If any Sheriff, or other, taking upon him to break Writs, do make any Warrant for Summons, or upon any Writ, Process or Suit, or for any Arrest or Attachment of Body or Goods, against any Persons, to appear in any of the Queen's Courts, (not having the original Writ or Process warranting the same) upon Complaint thereof to the Justices of Assize of the County where the Offence was committed, or the Judges of the Court out of which the Process issued; the Party so offending, and all Procurers thereof, shall be sent for before the same Justices or Judges by Attachments, or otherwise, and shall be examined upon their Oaths concerning the same.

Sheriffs, or others, making Process, not having the original Writ.

If the Offence shall be confessed, or proved by sufficient Witnesses, the said Justices or Judges shall forthwith commit the Offender to the Gaol of the County or

Imprisonment till Satisfaction to the Party grieved.

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Court

Court where he shall be examined; from whence he shall not be enlarged until he have paid the Party grieved 10 *l.* and all his Costs and Damages, to be assessed by the same Justices or Judges, and likewise 20 *l.* to the Queen.

Quietus est.

By Statute 21 *Jac.* 5. A *Quietus est* shall be a sufficient Discharge for a Sheriff, unless he be questioned within four Years after the Grant thereof. [See after.]

Forfeitures.

Every Officer or Minister that shall send out, or cause to be sent out, any Writ or Process, or by whose Default any Writ or Process shall be sent out, contrary to this Act, shall for every such Offence forfeit and pay to the Party grieved 40 *l.* and his Costs and Damages, to be recovered by Action of Debt, &c.

Sheriff's Table for Entertainment, &c.

By Statute 13 & 14 *Car.* 2. cap. 21. No Sheriff shall in Assize-time keep a Table for the Entertainment of any but those of his own Family or Retinue: Nor shall send any Present to any Judge of Assize for his Provision, nor send a Gratuity to any of his Officers or Servants. No Sheriff shall have more than 40 Men-Servants with Liveries attending upon him at the Assizes, not under 20, in any County in *England*, nor under 12 in *Wales*, on Pain to forfeit for offending in any of the Premises 200 *l.*

A Saving to London, &c.

Nothing before in this Act contained, shall extend to the Sheriffs of *London* and *Middlesex*, and the Sheriff of *Westmoreland*, or any Sheriff of any City and County.

No

No Person shall be assigned to be Sheriff of any County, but such as have Lands within the same sufficient to answer the King and his People. Sheriff's Sufficiency.

When any Sheriff shall have his *Quietus*, he shall be absolutely discharged, unless called in question within four Years. And every Officer and Minister, by whose Default any Writ or Process shall issue contrary to this Act, shall incur the like Forfeitures and Penalties, to be recovered in like manner as by the Act of 21 Jac. 1. cap. 5. is provided. Discharge by *Quietus est*.

This Act shall not extend to the Counties of Chester, Lancaster or Durham, or the Counties of Wales, being County Palatines, as to their Manner of Accompting. County Palatines.

If a Man have Judgment, and sues *Fi fa'*, and Goods are seized on, and then the Plaintiff dies, the Sheriff must sell, and give the Money to his Executor or Administrator. How the Sheriff may sell Goods on *Fi fa'*.
Mod. Cas. 290.

Also, that the Sheriff may sell without a *Venditioni Exponas*, and when. *Id.* 291, 294, 297. Without a *Venditioni exponas*.

Also, that the Plaintiff's Right comes to the Administrator *de Bonis non*, and he may have the Money out of Court. *Id.* 300. Administrator *de Bonis non* shall have the Money.

If the Sheriff on a *Distringas*, upon his Return to the Coroners, don't sell between the *Teste* and Return of the *Distringas*, (if he continue Sheriff) he shall forfeit Issues; and after Goods once seized, no Writ of Error or *Superfedeas* shall stay the Sale. *Ibid.* Issues forfeited for Default of Sale.

[*Vide ante Fieri facias.*]

Statutes.

FOR an Exposition upon the Statute of Limitations, 21 Jac. cap. 16. of Limitations in Real Actions, and Titles of Lands, vide Lutw. 779. and 2431, 2441. Also vide ante Action Popular. Also Tit. Limitation; and 32 H. 8. cap. 2. for Limitation of Real Actions, and for Avowries. Again, see the Statute 4 & 5 Ann. cap. 16. for Amendment of the Law, ante 42.

The 9 & 10 W. 3. cap. 14. is for Limitation of Writs of Error to be brought within 20 Years.

For an Explanation of the Statute of Frauds and Perjuries, as to one Man's answering for the Debt or Default of another, vide Mod. Caf. 249, &c.

And for other Variety of Statutes, and to what they tend, see the Table of Statutes of 2 Lill. Pract. Reg. at the latter End thereof.

That a Defendant in pleading need not set forth the whole Act of Parliament, but only so much as makes for himself. 1 Plowd. 105. a.

Subpœna.

THAT no Subpœna is to issue out of Chancery until a Bill be filed, and a Certificate thereof, according to 4 & 5 Ann. c. 16. for Amendment of the Law.

An Action was brought upon Statute 5 El. cap. 9. for not appearing as a Witness upon a Subpœna; and the Plaintiff recovered 10 l. and his Costs. 2 Lill. Reg. 326.

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Suggestion.

BY Statute 2 & 3 *Ed. cap. 13.* If a Suggestion be not proved within six Months after Prohibition, a Consultation lies with Costs.

See 8 & 9 *W. 3. cap. 10.* what Breaches of Covenant, and Deaths, may be suggested on Record, and what Proceedings to be thereupon. [*Vide ante* Libel, & *vide* Prohibition.]

Sunday.

Concerning Labouring, Selling of Goods, and Drovers and Waggoners travelling on Sunday, *vide Stat. 29 Car. 2. cap. 7.*

Supersedeas.

Vide ante Certiorari, &c. 296, 297.

T.

Tail.

BY *Westm. 2. 1. 13 E. 1.* Where Lands are given to a Man, and the Heirs of his Body, or to Husband and Wife, and the Heirs of their two Bodies, upon Condition, That if such Man, or such Husband and Wife die without Issue, that then the Land should revert to the Donor; or where Land

To prevent Feoffees to disinheret the Issue in Tail.

Second Husband.

Reverter.

A Writ of Formedon in descender.

is given in Frank-marriage, and such a Condition is conceived to be annexed or implied: In all such Cases, heretofore the Feoffees (after Issue had) had Power to alien, and to disinherit the Issue, contrary to the Mind of the Donors. Wherefore now it is ordained, That the Will of the Giver (according to the Form in the Deed of Gift, manifestly expressed) shall be from henceforth observed, so that they to whom the Land was given under such Condition, shall have no Power to alien the Land so given, but it shall remain to their Issue after their Death, or shall revert to the Giver, or his Heirs, if Issue fail: Neither shall the second Husband of any such Woman from henceforth have any Thing of the Land so given upon Condition (after the Death of his Wife) by the Law of England, nor the Issue of such second Husband and Wife shall succeed in the Inheritance; but immediately after the Death of the Husband and Wife, unto whom the Land was given, it shall return unto the Issue of the Giver, or his Heirs, as aforesaid.

Hereupon a new Writ of Formedon in descender is granted in this Form: *Præcipe A. quod juste, &c. reddat E. Manerium de F. cum suis pertinentiis, quod C. dedit tali viro, & tali mulieri & hæredibus de ipsis viro & muliere ex-antibus. Or thus, Quod C. dedit tali viro in liberum maritagium cum tali muliere, & quod post mortem prædictorum viri & mulieris prædicto B. filio eorum viri & mulieris descendere debeat per formam donationis prædictæ, ut dicit, &c. Vel, Quod C. dedit tali & hæredibus de*

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corpore suo exeuntibus, & quod post mortem illius talis prædicto B. filio prædicti talis descendere debeat per formam, &c.

This Act shall extend to Gifts hereafter to be made, and not to Gifts heretofore made, and a Fine hereafter to be levied upon such Lands, shall be void in Law: Neither shall the Heir or Reversioner (albeit they be of full Age, in *England*, or out of Prison) need to make their Claim: *But this Law concerning a Fine, is in some Sort altered by 32 H. 8. 36. which see in Fines.*

Where and how Issue in Tail may falsifie a Recovery, *Mod. Cases* 296.

That a Term for Years cannot be entailed, 10 *Rep.* 87.

Tales.

BY 4 & 5 *W. & M. cap.* 24. No Fees are to be taken on Account of a *Tales* return'd. No Fees.

And by 35 *H. 8. cap.* 6. A *Tales* may be granted, if but one of the Pannel appears. When grantable.

Also a *Tales* shall be granted upon a *Mediat' Linguae*, 10 *Rep.* 104. a. Upon Mediat' Linguae.

[*Vide ante* Jorors & Juries.]

Tender.

BY 4 & 5 *Annæ, cap.* 16. The bringing in to Court the Principals, Interest and Charges, shall be a good Discharge to a Personal Bond. Tender to a Bond.

See concerning the Pleading of *Tender*, 2 *Lill. Reg.* 392, &c. [*Vide* Trespas.]

Tenants in Common, &c.

Account lies
betwixt
them.

BY 4 & 5 *Ann. cap. 16.* An Action of Account lies for one Jointenant and Tenant in Common against the other, their Executors and Administrators, for their just Share and Proportion of the Profits.

See further concerning them, 2 *Lill. Reg.* 388, &c.

Traverse.

See concerning this in the 3^d Part of *Instr. Cler.* from 255 to 269. and 2 *Lill. Reg.* 362, &c. Also Mr. *Cornwall's* Tables, from 377 to 401.

Treason.

How to be
tried.

How Trials of Treason, both against Peers and Commoners, shall be, and what Evidence there must be, see the Statute of 7 *W. 3. cap. 3.*

See also Trials in Criminal Matters, *vide* Stat. 4 *Ann. cap. 8.*

Trespas.

No more
Costs than
Damages.

IN Trespas, if the Jury give not 40 s. Damages, the Plaintiff shall have no more Costs than Damages, unless, &c. 22 & 23 *Car. 2. cap. 9.*

See before, pag. 48, &c. the Judges Opinion concerning this Act.

Also see before, pag. 47. how this Clause by 11 & 12 *W. 3. cap. 9.* is extended to the Courts in *Wales*, and the Counties Palatine of *Chester* and *Durham*.

See

See the Table to *Modern Cases*, for several Declarations in Trespafs, with Pleadings, &c. relating thereto.

Note, By Statute 21 Jac. 16. *Pars inde*. In Disclaimer all Actions of Trespafs, *Quare clausum fregit*, and Amends wherein the Defendant or Defendants shall tendered. disclaim in his or their Plea, to make any Title to the Land, in which the Trespafs is by the Declaration supposed to be done, and the Trespafs be by Negligence or Unvoluntary, the Defendant or Defendants shall be admitted to plead a Disclaimer, and that the Trespafs was done by Negligence or Unvoluntary, and a Tender or Offer of sufficient Amends for such Trespafs before the Action brought, whereupon, or upon some of which, the Plaintiff or Plaintiffs shall be forced to join Issue; and if the said Issue be found for the Defendant or Defendants, or the Plaintiff or Plaintiffs be nonsuited, such Plaintiff or Plaintiffs shall be clearly barred from the said Action or Actions, and all other Suits concerning the same.

Trial.

[*Vide ante* Tales, Treason, Jurors and Jury, &c.]

SEE *Trials per Pais per tot.* & 2 *Lill. Reg.* 355.

For Rule of Notice of Trial, *vide Mod. Notice. Cases* 18.

Cause of a new Trial for Want of Evidence, *Id.* 22. New Trial.

Con-

- Notice. Concerning a Term's Notice for Trial, *Id.* 157.
- Proviso. That in Civil Actions the Defendant cannot try a Cause by *Proviso*, till Default in the Plaintiff, except in some Special Cases, *Id.* 246.
- King's Case. But there can be no Trial by *Proviso* in the King's Case, *Id.* 247.
- Concerning Trials where the Queen is Party, *Ibid.*
- Indictment. That the Defendant shall never carry an Indictment, removed hither by the Prosecutor to Trial, without Leave of the Court.

Trover.

- References. SEE a Treatise of *Trover and Conversion*. See also *Townsend's Preparative to Pleading*, for proper and convenient *Latin Words* for Goods and Merchandizes used in Actions of Trover. See also 2 *Lill. Reg.* 382, &c.
- Trover for Lemon Trees. Trover was brought for Fourteen Lemon Trees licensed to stand in a Lord's Garden, and the Lord had granted away his Garden, and it was held, That the Trees being separate in Boxes, could not pass by the Grant of the Garden, *Mod. Cases* 170.
- Against a Surveyor for stopping a Carpenter's Tools. Trover, for that the Surveyor of the Queen's Yard detain'd a Carpenter's Tools upon a pretended Usage to enforce Workmen to continue till the Work was done. Verdict *pro* Defendant.
- And there said, That the very Denial of the Goods is a Conversion, *Id.* 212. 1 Cr. 262.

In *Mod. Cases*, pag. 77. it is noted, That *In what Cases Indictment lies after Recovery in Trover or not.*
per Holt Ch. J. at Nisi-prins (ut audiui, says the Reporter) this Difference was taken, viz. If a Civil Action be brought, as Trover for Goods, after Recovery you may indict him for Trespass or Felony for the same Taking, because the Offences, or Cause of Action, are of a different Nature, the one Civil, the other Criminal; but if the first Prosecution had been Criminal, as an Indictment for Trespass, &c. and the Crime appears to be Felony, there you can't have Verdict or Judgment on the Indictment for Trespass, it being the inferior. And this, he said, had been adjudged in *Mr. Luttrell's Case. Vide Hob. 138. & 2 Lev. 208. Videtur contra.*

Trusts. [Vide Uses.]

NOTE, That before 27 H. 8. cap. 10. a Trust was an Use; also a Trust and an Use at Common Law are both one; but now since the Statute of Uses they remain separately in some Persons, and the Possession separately in others, as it did before the Statute, and are not brought together but by a Decree in *Chancery*, or the voluntary Conveyance of the Possessor of the Land to *Cestuy que Trust. Vaughan's Rep. 50.* *Trust and Use all one at the Common Law.*

How the Assignments of Trusts, and Declarations of Trusts and Uses, shall be in Writing by the Statute of Frauds and Perjuries, 29 Car. 2. cap. 3. *vide ante*, pag. 72. and also there concerning Trusts resulting by Implication of Law. See before, pag. 41. That Uses of Trusts may be made after Fines *Assignments of Trusts how to be made. How by Fines and Recoveries.*

Fines or Recoveries, by Statute 4 & 5 *Ann.* cap. 16.

Lands of *Cestuy que Trust* liable to an Execution upon a Judgment against him by Statute of Frauds.

Tythes. [*Vide* Prohibition.]

References.

THERE are several Books which treat particularly of the Subject of Tythes, but the fullest, latest, and most perfect, is that which bears the Title of *The Compleat Incumbent*, to which I refer you.

Hemp and Flax.

See 3 & 4 *W. & M.* cap. 3. For ascertaining of the Tythes of Hemp and Flax, and not to be above 4 s. per Acre, made perpetual by 7 *Annæ*.

If Minute Tythes.

Et vide 3 *Lev.* 365. where Flax, Hemp, &c. are Minute Tythes, and where not.

Small Tythes.

See also the Act made 7 & 8 *W. 3.* cap. 6. for the more easie Recovery of small Tythes, made perpetual by 3 & 4 *Ann.* cap. 18. which last Acts are set forth in *The Compleat Incumbent*. For Prohibitions relating to Tythes, see *Mod. Cases*, 70, 86, 96, 261.

V.

Variance.

Aided.

IF Variance between the Writ and Count is aided by the *Oxford Act*, 16 & 17 *Car. 2.* cap. 8. after a Verdict. *Vide Lutw.* 1181.

Denire

Venire facias de novo.

[*Vide ante Jurors and Jury.*]

THis Writ, it's said, is allowed where the Verdict is imperfect, and comes not up to the Issue. Where 'tis allowable.

But see First Part of *Instruct' Clerical Jurata, Venire & Distringas Jur.*

Venue.

[*See before Venire.*]

BY 21 *Fac. cap. 12.* Actions against Officers must be brought in their proper Counties; so upon Penal Statutes: *Vide ante* 8, 9. Actions in proper Counties.

Where the Action is laid in one County, and the Defendant by Pleading draws it into the County where the Cause of Action did arise; it may be tried in the one Place or the other, by Statute 16 & 17 *Car. 2. c. 8.* But it is in the Power of the Court where the *Venire* shall go. Where the Action is laid foreign, and Defendant by pleading brings it to the right County.

By 4 & 5 *W. & M. cap. 24.* Jurors are to have 10 *l. per Annum* in Freehold, or Copyhold, or Ancient Demeasne. Jurors 10 *l. per Annum.*

See this Head in 2 *Lill. Pract. Reg.* 399.

Verdict.

A Discontinuance as to Part of a Verdict Helped. is help'd by 32 *H. 8. c. 10.*

Trespass and Battery against Three who plead *son Assault*, the Jury find that Two of them Trespass joint and several.

them assaulted the Plaintiff first, and assessed Damages; and as to the Third, find that the Plaintiff assaulted him first; it was said to be joint and several: But by the Statute 8 & 9 *W. cap. 10.* he who is found not guilty shall have his Costs.

View in Real Actions.

Where View of Land shall be, and where not.

BY *Westm. 2. 48. 13 E. 1.* View of Land shall not be granted, but where it is necessary: For Example, If one lose Land by Default, and afterwards moveth for a Writ to demand the same Land; or when one by an Exception dilatory abateth a Writ after View had, as by Non-tenure, misnaming of the Town, or the like: In these Cases, upon Purchase of another Writ, View shall not be granted, if he had View in the first Writ: So in a Writ of Dower, when the Dower in Demand is of Land, which the Husband aliened to the Tenant, or his Ancestors, whereof the Tenant ought not to be ignorant: Here albeit the Husband died not seised, yet View shall not be granted to the Tenant. Also in a Writ of Entry, which abated, because the Demandant misnamed the Entry; here, if the Demandant purchase another Writ of Entry, the Tenant having had View in the first Writ, shall not have it in the second. Likewise in all Writs where Lands are demanded by reason of a Lease made by the Demandant or his Ancestor to the Tenant himself, being within Age, *Non compos mentis*, in Prison, or the like, View shall not be granted; but if the De-

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View was made to his Ancestor, View shall lie, as hath been heretofore used.

By Statute *De visu terræ, & Essoin de Ser-* *Simile.*
vitio Domini Regis, 12 E. 2. View shall be granted in a Writ of Ward, of Customs and Services, of Advowson of a Church, (*viz.* when there be more Churches than one in Town, and all of one Saint) of Dower to be assigned, and of *Nuper obiit*.

Note, By Statute 4 & 5 Ann. cap. 16. For View in o-
Amendment of the Law, View may be had ther Actions.
in Personal Actions. *Vide ante* 40.

Voucher.

BY *Westm.* 1. 6. 13 E. 1. As the Tenant shall lose the Land in Demand, in case where his Vouchee dischargeth himself of the Warranty, so also shall the Vouchee lose, where he denieth the Warranty, and it be tried against him: Also where an Enquest is depending between the Tenant and his Vouchee, and the Demandant will require a Writ to cause the Jury to come, it shall be granted him.

If Vouchee dischargeth the Warranty.

By the Statute of Vouchers, 20 E. 1. This Counterplea of Voucher, *viz.* That neither the Vouchee nor his Ancestors had ever any Thing in the Land, so that he might a Feoffment make with Warranty, shall be received, albeit the Vouchee be ready to enter into Warranty.

Counterplea to be received.

By Statute 14 E. 3. 18. Where the Tenant voucheth to Warranty a dead Man, the Demandant shall be received to aver, that the Vouchee is dead, and that there is none such.

Dead Man vouched.

Utes.

Uses. [*Vide* Trusts.]

Uses and
trusted E-
states ad-
judged to be
in *Cestuy que*
Trust, &c.

BY Statute 27 H. 8. 10. Where any Person or Persons stand or be seised of any Honours, Manors, Lands, Tenements, Rents, Services, Reversions, Remainders, or other Hereditaments, to the Use, Confidence, or Trust of any other Person or Persons, or of any Body Politick, by reason of any Bargain, Sale, Feoffment, Fine, Recovery, Covenant, Contract, Agreement, Will, or otherwise: In every such Case, every such Person and Persons, and Body Politick, having such Use, Confidence or Trust in Fee-Simple, Fee-Tail, for Life or Years, or otherwise; or any Use, Confidence or Trust in Remainder or Reverter, shall stand and be seised, deemed and adjudged in lawful Seisin, Estate and Possession of and in the Honours, Castles, &c. with their Appurtenances, of and in such like Estates, as they have in Use, Trust or Confidence of or in the same: And the Estate, Title, Right and Possession of such Person or Persons as are seised of any Lands, Tenements or Hereditaments, to the Use, Confidence, or Trust of any such Person or Persons, or Body Politick, shall be deemed and adjudged to be in him or them that have such Use, Confidence, or Trust of any such Quality, Manner, Form and Condition, as they had before, in or to the Use, Confidence or Trust that was in them.

simile.

When divers Persons are so seised to the Use, Confidence or Trust of any of themselves,

elves, they amongst them that have such Use or Trust, shall likewise have the Seisin, Estate and Possession, in such Quality, Manner and Condition as they had the Use or Trust.

Howbeit, the Right, Title, &c. of all A Saving. other, (except of the Persons so seised to any Use or Trust) is saved, and all former Right, Title, &c. is also saved to them.

Where any be seised to any Use or Intent, *Cestuy que* that another shall have a yearly Rent out of the same Lands, *Cestuy que Use of the Rent* shall be deemed in the Possession thereof, of like Estate as he or she had that Use, and shall distrain for Non-payment of the said Rent, and make Avowries, Conusances, and Justifications, and use all other Remedies therein, as if the said Rent had been actually granted to such *Cestuy que Use*.

Where an Estate is made in Possession or Dower. Use to Husband and Wife, and his Heirs, or the Heirs of their two Bodies, or of one of their Bodies, or to them for their Lives, or for the Wife's Life for her Jointure; in any of these Cases she shall not have Dower: Howbeit, upon a lawful Eviction of that Jointure. Jointure, she shall be endowed according to the Rate of her Husband's Land, whereof she was dowable.

Such a Jointure being made after Mar- Jointure re- riage, the Wife (after her Husband's Death) fused. may refuse it, and betake her to her Dower, unless such Jointure be made by Act of Parliament.

M m

Provided,

A Review of all the Statutes,

Proviso.

Provided, That this Act shall not extinguish, release, discharge, or suspend any Statute, Recognizance, or other Bond, by the Execution of any Estate settled by Force of this Act.

Wills, &c.

All Wills and Testaments heretofore made, or hereafter to be made, before the first Day of *May* 1536. shall be good in Law, in such manner as they were commonly taken and used within 40 Years before the making of this Act.

Fines, Reliefs and Heriots.

The King shall not take Advantage by Occasion of the executing of any Estate by Authority of this Act before the First of *May* 1536. viz. by having or demanding any *primer Seisin*, Livery, *Ouster le main*, Fine for Alienation, Relief or Heriot: But after that Time, Fines for Alienations, Reliefs and Heriots, shall be paid to the King, and also Liveries, and *Ouster le mains*, shall be sued for Uses, Trusts and Confidences, which shall be from thenceforth made and executed in Possession by Force of this Act, neither shall any other Lord demand or take any Fine, Relief or Heriot, by Occasion of this Statute before the said First of *May* 1536.

Wales.

This Act shall not be prejudicial to any Person or Persons born in *Wales*, or the Marches thereof, who have any Estate to them, executed by Force of this Act, in any Lands in this Realm, whereof any other Person now stands seised to their Use; but such Person or Persons born there may lawfully have and keep all such Lands by Authority of this Act, according to the Tenor thereof. See before, *Bargains and Sales*, &c. By

Usury.

BY Statute 12 Car. 2. c. 13. None shall upon a Contract directly or indirectly take for the Loan of any Money, Wares, Merchandizes, or other Commodities above the Rate of 6*l. per Cent.* for Loan of 100 *l.* for a Year, and so proportionably, upon Pain to forfeit Treble the Value of the Money, or other Things lent.

No Scrivener, Broker or Solicitor, shall take or receive for Brocage above the Rate of 5 *s.* for the Loan of One hundred Pound for a Year, nor above Twelve Pence for making a Bond, upon Pain of Forfeiture of Twenty Pounds, to be divided between the King and the Prosecutor, and to suffer half a Year's Imprisonment.

Note, Where there is not an usurious Contract preceding, it is not within the Statute of Usury.

And the Defendant must, in Pleading, set forth a corrupt Agreement, as the Statute requires.

Also the Statute ought to be pleaded; for although it may seem Usury *prima facie*, upon View of the Condition, yet perhaps the Plaintiff might have rectified it by his Replication. *Lutw.* 466, &c.

Where the Principal and Interest are in Hazard upon a Contingency, it is no Usury, though the Interest doth exceed 6 *l. per Cent.* And when there is an Hazard that the Plaintiff may have less than his Principal, it is no Usury. *Show. Rep.* 8.

M m 2

Wager

W.

Wager of Law.

BY *Magna Charta* 28. 9 H. 3. No Bailiff shall put any Man to his open Law, or to an Oath, upon his own bare Saying, without faithful Witnesfes brought in for the same.

Witnesfes.

By Statute 38 E. 3. 5. Any Man may wage his Law (by fufficient People of his Condition) againft *Londoners* Papers, and the Creditors fhall take Surety otherwife, if he please, but fhall not put the Party to plead to the Inqueft, unlefs he will fo do of his own Accord.

Londoners
Papers.

In Debt for
Arrearages of
Account.

By Statute 5 H. 4. 8. In Actions of Debt upon the Arrearages of an Account, feigning (to the Intent to put the Defendants from their Law) that the same was found before their Apprentices or Servants, as Auditors affigned therein, it fhall be in the Judges Difcretion, upon Examination of the Attorney, (or whom elfe they please) to receive the Defendants to their Law, or to try the same by Inqueft.

About 6 *Annæ*, in *B. R. Gunner's* Cafe, the Plaintiff became nonfuit, when the Defendant was ready to perfect his Law.

[*Vide* and *Ley-gager.*]

Ways.

Ways.

The Statute 3 & 4 W. & M. was enacted for the Repairing of High-ways. Repairs.

Also 8 & 9 W. 3. cap. 16. was made for enlarging Common High-ways. Common High-ways.

A Man, it's said, cannot claim a Way over my Ground, from one Part thereof to another; but from one Part to another of his own Ground, he may claim a Way over my Land. *Mod. Cases 3.* How a Man may claim a Way over my Ground.

A Stranger may have a Way over anothers Soil after three Manners; First, For Neceffity; Secondly, By Grant; Thirdly, By Prescription. *Ibid.* How a Stranger may have a Way over anothers Soil.

For the Manner of Pleading a particular Estate of a Way, *Vide eundem 4.* Pleading.

Vide Privilege of the Grantee of a Wreck for a Way. *Ibid.* 149. For a Wreck.

Dna' Regin' vers' Inhabitant' de Clunworth, *Mod. Cases 163.* They were indicted for not repairing a common Foot-way, and submitted by pleading Guilty; And the Court, before they would set a Fine, would be certified by some of the Justices of Peace of the Neighbourhood, that the Way was sufficiently repaired, which they did. Parties submit to an Indictment. For not Repairing a common Foot-way.

Per Cur', If one be guilty upon such an Indictment, he is quit for being fined; but a Distringas *in infinitum* shall go to the Sheriff against him, till he certifie that the Way is repaired. *Ibid.* No Fine but Distringas *quousque*, &c.

And *per H. Ch. J.* If one has Land adjoining on a Navigable River, every one that uses that River has, if Occasion be, Way on the Brink of a Navigable River.

A Review of all the Statutes,

Right to a Way by Brink of Water over that Land, or further in if necessary. *Ibid.*

To Repair
a Way by
Prescription.

If a Man by Prescription be bound to repair a Way, he is not bound to put it into better Repair than it has been in, since out of Mind before. *Ibid.*

Warrants of Attorney.

Must be
filed.

By 4 & 5 *Ann. cap.* 16. for Amendment of the Law, the Attornies on both Sides must file their Warrants in all Causes with the proper Officers. *Vide ante pag.* 39. & *vide ante pag.* 116.

Warrant to
confess a
Judgment.

A Man gives a Warrant of Attorney to confess Judgment the first Day of the Term, and dies, it may be entred at any Time during the Term. *Mod. Cases* 86.

(*Vide ante Attorneys*, 116. Rules and Orders 118, &c.)

Warranty.

In Deeds con-
taining *Dedi*
& *concessi*, &c.

By the Statute of *Bigamy* 6. 4 E. 1. In Deeds containing *Dedi & concessi tale tenementum*, without Non-age, or any Clause of Warranty, and to be holden of the Donors and their Heirs by a certain Service; in this Case, the Donors and their Heirs are bound to Warranty: But where the Deed is *Dedi & concessi*, &c. to be holden of the Chief Lord of the Fee, or of other, and not of the Feoffors and their Heirs, reserving no Service, and without Homage and the aforesaid Clause; here, the Feoffors Heirs shall not be bound to Warranty: Howbeit, the

the Feoffor himself during his Life (by Force of his own Gift) is bound to Warranty.

The Statute of *Glocester* 3. 6 E. 1. Where Tenant by the Curtesy aliens his Wives Land, his Son (having no *Assets* by Descent) shall not be barred to recover the Land by a Writ of *Mortdancer*, of the Seisin of his Mother; albeit his Father's Deed mentioneth, That He and his Heirs shall be bound to Warranty; but in case any Land descend to the Heir on his Father's Side, he shall be barred for the Value of the Inheritance so descended.

Wife's Land
aliened by
Tenant by
the Courtesy.

Also if afterwards any Inheritance descend to him by the same Father, the Tenant shall recover against him of the Seisin of his Mother, by a Judicial Writ to be issued out of the Rolls of the Justices before whom the Plea was pleaded, to resummon his Warranty, as hath been heretofore used, in Cases where the Warrantor pleads *Riens per descent* from him, by whose Deed he is vouched.

Warranty
resummoned.

Likewise the Issue of the Son may recover by Writ of Cousinage, *Ayel* and *Besayel*, neither shall the Heir of the Wife be barred of his Action, after the Death of his Father and Mother, by Writ of Entry, for Land which his Father did alien in the Time of his Mother, whereof no Fine is levied in the King's Court.

How the Issue
of the Son
may recover.

Vide ante 43. Statute 4 & 5 *Annæ* cap. 16. That Warranties made for Life, descending on him in Reversion or Remainder, and all collateral Warranties by any Ancestor, who

Warranties
void against
the Heir.

has no Estate of Inheritance in Possession in the same, shall be void against the Heir.

Waste.

Farmers shall
not make
Waste.

By *Marlb. 23. 52 H. 3. Pars inde.* Farmers (during their Terms) shall not make Waste, Sale, or Exile of House, Woods, Men, or any Thing else, which appertains to the Tenements they have in Farm, without special Licence had by Writing of Covenant, making Mention, that they may so do; in pain, that they (being thereof convicted) shall yield full Damage, and be grievously punished by Amerciament.

Against Te-
nant by the
Curtesie.

By the Statute of *Glocester 5. 6 E. 1.* An Action of Waste is maintainable against Tenant by the Curtesie in Dower for Life or Years, and the Party attainted thereof shall lose the Thing wasted, and Recompence thrice as much as such Waste is taxed at.

As for Waste done in the Time of Wardship, *Magna Charta 4. 9 H. 3.* (before 1.) shall be observed; and moreover, the Guardian shall recompence the Heir for the Waste done, if the Wardship lost shall not amount to the Value of the Damages before the Heir's full Age.

Process in
Waste.

West. 2. 14. 13 E. 1. The Processes in an Action of Waste, shall be Summons, Attachment and Distress; and if the Defendant appear not upon the Distress, a Writ of Enquiry shall be directed to the Sheriff to inquire of the Waste, upon Return where-
of,

of, the Court shall proceed to Judgment, according to the Statute of *Glocester, cap. 5.* before.

West. 2. 22. 13 E. 1. An Action of Waste shall be maintainable against one Tenant in Common against another, of Wood, Turf-Land, Fishing, or the like; and when the Cause comes to Judgment, the Defendant shall choose either to take his Part in a certain Place (to be set out by the Sheriff with a Jury), or to grant to take nothing but as his Pernors do; and if he choose to take his Part in a Place certain, the Place wasted shall be assigned for his Part. The Writ in this Case is, *Cum A. & B. tenent. Boscum pro indiviso, B. fecit vastum, &c.*

By one Tenant in Common against another.

The Statute of Waste, 20 E. 1. An Action of Waste is maintainable by the Heir for Waste done in his Ancestors Time, as well as for that done in his own Time.

By an Heir.

By *Artic. sup Chart. 18. 28 E. 1.* An Action of Waste is maintainable against Escheators, and Sub-escheators, for Waste by them committed in Wards Lands.

Against Escheators.

By Statute 11 H. 6. 5. An Action of Waste is maintainable by the Reversioner against Tenant for Life or Years, that first aliens his Estate to a Stranger, and afterwards (still receiving the Profits thereof) commits Waste: Howbeit this Statute shall not extend to such Tenants as holds without Impeachment of Waste.

By a Reversioner against Tenant for Life, &c.

By 8 & 9 W. 3. cap. 10. In all Actions of Waste, wherein the single Value or Damages found by the Jury doth not exceed 20 Nobles, the Plaintiff shall have his Costs, but

Costs in Waste.

A Review of all the Statutes,

but at the Common Law no Costs shall be recovered. *Vide ante* 51.

View in
Waste.

In a Writ of Waste, the Jury must have a View by the Statute, and the Judgment may be with or without *per visum Juratorum*. *Vide ante* View.

Wills.

Widows
Crop.

By *Merton* 2. 20 *H.* 3. Widows may bequeath the Crop of their Ground, as well of their Dowers as other Lands, saving to the Lords of the Fee all such Services as be due for their Dowers or their Tenements.

Manors holden in Soc-
cage, &c. not
of the King.

By Statute 32 *H.* 8. 1. Every Person having Manors, Lands, Tenements, or Hereditaments, holden in Soccage, or of the Nature of Soccage-tenure, and not having any such Manors, Land, &c. holden of the King by Knight-Service, Soccage, Tenure in Chief, or of the Nature of Soccage-tenure in Chief, nor of any other Person by Knight-Service, shall have Power to give, dispose, will and devise, as well by his last Will and Testament, in Writing or otherwise, by any Act executed in his Life, all such Manors, Lands, &c. at his Pleasure. See the Statute, saving to the King *primer Seisin*, &c.

And if the Lands be held of the King in Chief by Knight-Service, there is a saving to the King of *primer Seisin*, &c. so much of the said Lands, as shall amount to a clear yearly Value of a Third Part thereof.

By Statute 34, 35 *H.* 8. 5. Where the Statute of 32 *H.* 8. 1. mentioneth Manors, Lands,

Lands, &c. of Inheritance, it shall be ex-
pounded and taken of Estates in Fee-simple.

Lands of Inheritance.

Every Person having a sole Estate in Fee-simple, or seized in Coparcenery or in Common in Fee-simple, in any Manors, Lands, Tenements, Rents, or other Hereditaments in Possession, Reversion, or Remainder; and having no Manors, Lands, &c. holden of the King, or of any other by Knight-Service, may give, dispose, will, or devise to any Person or Persons (except Bodies Politick and Corporate) by his last Will and Testament in Writing, or by Act executed in his Life, by himself solely, or by himself and others jointly, severally, or particularly, or by all those Ways, or any of them, as much as in him of Right is, all his said Manors, Lands, Tenements, Rents and Hereditaments, or any of them, or any Rents, Commons or other Profits out of the same, or any Parcel thereof, at his free Will and Pleasure. See the Statute, and Savings therein, of *primer Seisin*, &c. to the King, when held by Knights-Service, &c. as before.

Lands held in Fee-simple.

Bodies Politick excepted.

Provided, that every Person, from whom the King or other Lord shall take any Manors, Lands, &c. for their Third Part, or to make it up, may have Relief in Chancery against every Person who shall be intitled (by any such Will or Gift) to the other Two Parts, to have such Contribution for the same, as the Lord Chancellor or Keeper shall think convenient.

Contribution in Chancery.

See before pag. 71, &c. *Tit. Amendment, Reference*, to prevent Frauds in Leases Wills, &c.

Also

A Review of all the Statutes,

Also *Pag.* 75. concerning Nuncupative Wills, and the Probate thereof.

And *Pag.* 78. further Amendment to prevent Frauds by Wills, &c.

For Wages
in the
Queen's
Docks.

And *Pag.* 44. where Probate of Wills, &c. (of Persons dying) for Wages or Work done in the Queen's Dock, shall be granted.

Witness. [*Vide Evidence.*]

Process a-
gainst Wit-
nesses to
prove Deeds.

BY Statute 12 E. 2. 2. When a Deed or other Writing is denied in Court, wherein Witnesses are named, Processes shall be awarded to cause them to appear; and if they come not at the great Distress returned, or the Return be, That they have nothing, or that they cannot be found, yet Enquest shall proceed; but if the Witnesses appear at the great Distress, and the Enquest for some Cause remain untaken, the Witnesses shall have like Day given, as is assigned for the taking of the Enquest; when if they appear not, the Issues first returned upon them shall be forfeited; and the taking of the Enquest shall not be deferred because of their Absence, neither yet for the Absence of Witnesses dwelling in a Franchise where the King's Writ runs not.

Issues forfeit-
ed.

If a Witness
doth not ap-
pear in Civil
Causes.

By Statute 5 El. 9. *Pars inde.* None served with Process out of a Court of Record, to testify as a Witness (being tendered convenient Charges, and having no reasonable Let) shall therein make Default, in Pain to forfeit to the Party grieved 10 l. and besides to yield him such further Recompence, as the Judge of the same Court shall think fit,

fit, according to the Damage sustained; which said Sums shall be by him recovered in any Court of Record, by Action of Debt, in which no Wager, Effoin, &c. shall be allowed.

By 10 & 11 W. 3. cap. 23. No Fee is to be taken for the Discharging of a Recognizance for a Witness's Appearance, nor more than 2 s. for drawing of the Bill. **Witness's Recognizance.**

And by 29 Car. 2. cap. 3. There must be Three Witnesses to a Will for Lands. **Three Witnesses to a Will.**

And by 4 & 5 Annæ, cap. 16. A good Witness upon a Trial at Law, shall be a good Witness to prove a Nuncupative Will. **To a Nuncupative Will.**

[*Vide* Trials per Pais.]

Where in case of a single Bill, two Persons of the same Name, produced as Witnesses, were ordered to write their Names. *Mod. Cases* 167. **Witnesses ordered to write their Names.**

Per H. C. J. Suborning Witnesses to swear, is no Crime, otherwise than it relates to a Perjury: To make Words actionable in themselves, it is necessary to charge some scandalous Crime by them: But barely to say, That a Man did forswear himself, or suborn another so to do, is not charging an Offence punishable, and therefore not sufficient to charge an Action. *Id.* 203. Court was divided. See there how the Judgment ought to be upon their being divided. **If bare suborning Witnesses to swear be a Crime.**

Where the Party rescued was allowed as Rescue. Witness, and why. *Id.* 211.

Where, in Case for a malicious Indictment &c. a former Oath of the Defendant's Wife was ed. **Defendant's Wife allowed.**

was allowed for Evidence of Felony committed. *Id.* 216.

Ancient
Deed.

Where the Counterpart of an ancient Deed lost, was admitted for Evidence.

Ancient
Book.

In Ejectment, to prove a Lease to the Queen, an ancient Book of Entries was offered; but the Court insisted upon an Inrolment thereof to be produced. *Id.* 248.

Wreck.

Wreck when,
and when
not.

BY *Westm.* 1. 4. 3 *E.* 1. Where a Man, Dog or Cat, escape alive out of the Ship, neither the Ship or other Vessel, nor any Thing therein, shall be adjudged Wreck, but the Goods shall be saved and kept by the Sheriff, Coroners, or the King's Bailiffs, and delivered to the Inhabitants of the Town where the Goods are found; so that if any within a Year and a Day sue for those Goods, and after prove that they were his at the Time of the Shipwreck, they shall be restored to him without Delay: But if not, they shall be seized by the said Sheriff, Coroners or Bailiffs, for the King's Use, and shall be delivered to the Inhabitants of the Town, who shall answer before the Justices for the Wreck belonging to the King.

Restoration.

If it belong
to another.

Also where the Wreck belongeth to another, he shall have it in like manner; and if any be attainted to have done otherwise, he shall suffer Imprisonment, make Fine to the King, and yield Damages also.

If by a Bai-
liff.

If a Bailiff do it, and it be disallowed by his Lord, the Bailiff shall answer for it, if

if he have whereof; but if not, the Lord shall deliver his Bailiff's Body to the King.

By *Prerog. Reg.* 11. 17 E. 2. The King shall have Wreck of the Sea, Whales, and great Sturgeons, taken in the Sea and elsewhere throughout the whole Realm, except in Places privileged by the King.

[*Vide ante* Way.]

Writs, and Abatements of Writs.

BY *West.* 2. 24. 13 E. 1. *Pars inde.* Where in the *Chancery* in one Case a Writ is found, and in another Case falling under like Law, and requiring like Remedy, there is found none, the Clerks of the *Chancery* shall agree in making the Writ, or the Plaintiffs may adjourn it until the next Parliament, and then the Cases being written, in which they cannot agree, let them refer themselves to the next Parliament, where (by the Consent of Men learned in the Law) a Writ shall be framed; lest the King's Court should fail to administer Justice to Complainants.

Of framing a new Writ where wanting.

By *Westm.* 2. 49. 13 E. 1. *Pars inde.* Where the Law faileth, lest Suitors should depart from the King's Court without Remedy, Writs shall be provided in their Cases.

Simile.

By Statute 6 R. 2. Stat. 1, 2. If in Writs of Debt, Accompt, and the like, it shall be declared, that the Contract thereof was made in another County than is contained in the original Writ, such Writ shall be abated.

Abatement.

[*Vide ante* Abatement, Additions, &c.]

The

A new Writ.

The Statute 21 *Jac. cap. 16.* hath provided a new Writ after Judgment, or Outlawry reversed, but not after the Plaintiff's Death.

Variance.

By 16 & 17 *Car. 2. cap. 8.* a Variance is helped after Verdict between the Writ and Count.

Upon Interlocutory Judgments.

By 8 & 9 *W. 3. cap. 10.* Writs of Inquiry upon Interlocutory Judgments after the Death of the Parties, may be sued out.

Teste on a Sunday.

A Writ of Possession was *Teste* on a Sunday, and therefore void. *Hill. 10 & 11 W. 3. B. R. Vide 29 Car. 2. cap. 7.*

If it may not be executed on the Return-Day.

If a Writ may not be executed on the Day of the Return legally, it shall not the next Day. *Mod. Cases 159.*

Writ fill'd up after sealed.

Mich. 3 Ann. in B. R. per H. C. J. said to be illegal to fill up a Writ after 'tis sealed; and that whoever is arrested by Vertue of such a Writ, has an Advantage. *Id. Mod. Cases 310.* But *Quære* (says the Reporter) if it be false Imprisonment, or to be relieved on Motion.

F I N I S.



T H E

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A N

APPENDIX

TO THE

REVIEW

OF THE

Statutes, &c.

*Inrolment of Deeds, and Pleading
to it ; Fee-Farm Rents, &c.*

BY Statute 10 *Annæ* it was enacted,
That all Persons, Bodies Politick
and Corporate, having before the
3d of *March* 1711. made Default or
Omission of Inrolment of any Leases or
Grants made by Her Majesty, or Her Royal
Predecessors, or any Persons claiming under

Default of In-
rolment of
Leases or
Grants by
Her Majesty,
no Forfeiture.

A

der

An Appendix to the

der them, shall and may before the 3d of *March* 1712. bring such Leases to the proper Auditor to be Inrolled, who is hereby required so to do, and to put the Rents thereupon reserved in Charge, as if such Leases had been brought to be Inrolled within the Time limited: And on such Inrolment and Payment of Arrears of Rent, (and not otherwise) the Lease shall continue as if no Forfeiture (for want of Inrolment) had been made; and the Lessees, &c. are hereby exonerated and discharged from all Penalties which might be occasioned for want of such Inrolment.

This Act not to give Continuance to Leases avoided for want of Inrolment.

In Pleading, Copy of the Inrolment of Deeds good Title, where the Originals are wanting.

This Act shall not extend to give Continuance to any Leases, which in any Court have been avoided for want of such Inrolment.

And by the same Statute, for supplying a Failure in Pleading the Title of Lands, &c. conveyed by Deeds of Bargain and Sale indented and inrolled according to the Statute 27 *Hen.* 8. where the Original Indentures are wanting, it is enacted, That where in any Declaration, Avowry, &c. any such Indenture inrolled shall be pleaded with a *Profert in Curia*; the Person so pleading shall be allowed to produce and shew forth, by Authority of this Act, to answer such *Profert*, as well against Her Majesty as against any other Person, a Copy of the Inrolment of such Bargain and Sale, and such Copy examin'd with the Inrolment, and signed by the proper Officer, and proved upon Oath

to



Review of the Statutes, &c.

3

to be a true Copy, shall be of the same Force as the said Indentures.

And by the same Statute, where any Rents intended by 22 *Car. 2.* and 22 & 23 *Car. 2.* to be sold, and sold pursuant thereto, are named in any Deeds, Fines, &c. or in any Declaration, &c. by the like Descriptions as the same were named in the Indentures of Sale made by the Trustees for Sale thereof; it may serve, and shall be sufficient for the Conveying the Title to such Rents under the said Trustees, and shall be allowed in all Courts.

Conveyance
of Rents
good, made
by Trustees.

But nothing herein shall extend to allow any Benefit in pleading, or deriving Title to any Rent, which hath not been paid within 20 Years next before the Time of such pleading, or deriving Title to the same.

But Rents
must be paid
within 20
Years to have
Benefit in
pleading the
Title.

Members of Parliament.

BY Statute 9 *Annæ* it was enacted, That after the Determination of the Parliament then in being, no Person shall be capable to sit or vote as a Member of the House of Commons for any County, City, &c. within *England, Wales, or Berwick upon Tweed*, who shall not have an Estate Freehold or Copyhold, for Life, or for some greater Estate, either in Law or Equity, for his own Use in Lands, &c. clear of all Incumbrances, lying in *England, &c.* of the Annual Value of 600 *l.* above Reprizes, for

What Estate
sufficient to
qualify a Man
to sit and vote
as a Member
of the House
of Commons.

An Appendix to the

every Knight of a Shire; and 300 *l.* above Reprizes, for every Citizen, Burgeſs, or Baron of the Cinque-Ports: And if any Perſon ſhall be elected to ſerve in Parliament, and ſhall not at the Time of Election be ſeiſed of ſuch an Eſtate in Lands, Tenements, &c. his Election ſhall be void.

Eldeſt Son of a Peer, or qualified Perſon, as Knight of Shire, may be a Member.

This Act ſhall not extend to make the eldeſt Son, or Heir Apparent of any Peer, or of any Perſon qualified by this Act to ſerve as Knight of a Shire, incapable of being elected, &c.

Universities to return Members as heretofore.

Nor ſhall it extend to either of the Universities in *England*; but they may elect and return Members as heretofore.

Mortgagees of Eſtates not qualified, unleſs they have been in Poſſeſſion ſeven Years.

No Perſon ſhall be conſtrued to be qualified to ſit in the Houſe of Commons, within the Meaning of this Act, by Vertue of any Mortgage, whereof the Equity of Redemption is in any other Perſons, unleſs the Mortgagee ſhall have been in Poſſeſſion of the mortgaged Premiſſes Seven Years before his Election.

Oath to be taken by Candidates at Elections.

Every Perſon (except as aforeſaid) who ſhall appear as a Candidate to be elected a Member of the Houſe of Commons in *England*, &c. ſhall, upon Requeſt to him made, at the Time of Election, or before the Day prefix'd in the Writ of Summons for the Meeting of the Parliament, by any Perſon who ſhall ſtand Candidate at ſuch Election, or by any two Perſons having Right to vote

at such Election, take the Oath mentioned in this Act *mutatis mutandis*.

The Oath may be administered by the Sheriff or Under-Sheriff, or by the Officer to whom it shall appertain to take the Poll, or make the Return at such Election, or by any two Justices of the Peace, who are to certify the same into the *Chancery* or *Queen's-Bench* within Three Months after, under the Penalty of 100 *l*. One Moiety to the Queen, the other to the Prosecutor: And if any such Candidates shall refuse to take the said Oath, their Election shall be void.

Oath administered by Sheriff, &c. to be certified into the *Chancery*, &c. on pain of 100 *l*.

No Fee shall be taken for such Oath, &c. except 1 *s*. for Administering the same, and 2 *s*. for Making the Certificate, and 2 *s*. for Receiving and Filing of it, under the Penalty of 20 *l*.

Fees for Administering the Oath.

Fraudulent Conveyances, and Electors of Knights of Shires in Parliament.

BY Statute 10 *Annæ* it is enacted, That all Estates and Conveyances made to any Persons, in any Collusive Manner, to qualify them to give their Votes at Elections of Knights of the Shire (subject to Conditions to determine or re-convey such Estate) shall be taken against those Persons who executed the same, as free and absolute, and be holden by all such Persons to whom such Conveyance shall be made freely acquitted from all manner of Trusts,

Fraudulent Conveyances to multiply Votes for Knights of Shires.

Forfeiture.

Clauses of Re-entry, &c. between the said Parties, or in Trust for them: And all Bonds, Covenants, &c. for the restoring thereof, shall be null and void: And every Person who shall make and execute such Conveyances, or being privy to such Purpose, shall devise or prepare the same, or any Person who by Colour thereof shall give any Vote at any Election of Knights of a Shire, shall forfeit 40 l. with full Costs of Suit.

What Persons are qualified to vote for Knights of Shires.

After the 1st of May 1712. no Person shall vote for the Electing of a Knight of a Shire in *England*, in Right of any Lands which have not been assessed to the Publick Taxes, Church-Rates, and Parish-Duties, in such Proportion as other Lands of 40 s. *per Ann.* in the Parish where the same shall be, and for which such Person shall not have receiv'd the Rents, or be intitled so to do, to the Value of 40 s. or more, to his own Use for one Year before such Election, unless it comes by Descent, Marriage, Devise, or Presentation to some Benefice, &c. and voting contrary to the true Intent hereof, shall forfeit 40 l. One Moiety to the Poor where the Lands lie, the other to the Person suing for the same.

Acts repealed.

The Act 7 W. 3. as to so much only as concerns the Oath to be administered to Freeholders, shall be, and is hereby repealed.

And

And upon every Election to be made, every Freeholder before Polling (if required) shall take the Oath mentioned in this Act; which Oath the Sheriff, &c. is to administer: And such Person being convicted of Perjury, or Suborning any Freeholder, &c. to commit such Perjury, he shall incur the Penalties in the Act 5 Eliz. for punishing Perjury.

Oath to be taken by every Freeholder before Polling.

The Sheriff, &c. shall enter not only the Place of the Elector's Freehold, but also the Place of his Abode; and enter *'jurat'* against the Name of every Voter, who shall take the Oath; and within 20 Days after such Election, shall deliver upon Oath unto the Clerk of the Peace, all the Poll-Books without Alteration: And where there is more than one Clerk, then the Original Poll-Book to one such Clerk of the Peace, and attested Copies thereof to the rest, to be kept among the Records of the Sessions.

Sheriff to enter Place of Elector's Freehold and Place of Abode, and deliver Poll-Books to the Clerk of the Peace.

Any Quaker during the Act 7 W. 3. upon such Election, may declare the Effect of the said Oath, upon his Solemn Affirmation, and shall be admitted to give his Vote; and the Sheriff shall enter *'Affirmat'* against the Name of every such Quaker; and if convicted falsely to have affirmed any Thing, which if the same had been in the usual Form would have amounted to Perjury, such Quaker shall incur the same Penalties as before enacted against Perjury.

Quakers Affirmation to be taken; and if false, to incur the Penalties of Perjury.

An Appendix to the

*Ecclesiastical Persons not to buy the next
Avoidance of Church-Preferments, Cu-
rates, &c.*

Bishops to
appoint Sti-
pends for Cu-
rates not more
than 50 *l.* per
Annum, or less
than 20 *l.*

BY Statute 12 *Annæ* enacted, That if any Rector or Vicar shall after the 29 September 1714. present any Curate to the Bishop or Ordinary to be licensed to serve the Cure of such Rector in his Absence, the Bishop having Regard to the Greatness of the Cure, and Value of the Living, shall, before granting such Licence, appoint under his Hand and Seal, a Stipend not exceeding 50 *l.* per *Annum*, nor less than 20 *l.* to be paid at such Times as he shall think fit by such Rector or Vicar: And on Complaint that any Curate licensed before 29 Septemb. 1714. hath not a sufficient Maintenance, the Bishop may appoint a certain Stipend; or on Neglect or Refusing to pay such Stipend, the Bishop shall determine the same, and may sequester the Profits of such Benefice until Payment be made.

Next Avoid-
ance of a Pre-
sentation ta-
ken for Mo-
ney, to be
void, and the
King may pre-
sent for that
Time.

If any Person after 29 Sept. 1714. shall for any Sum of Money, Reward, Gift, &c. in his own Name, or in the Name of any other Person, take or accept the next Avoidance of, or Presentation, to any Benefice with Cure of Souls, Dignity, &c. and shall be presented thereupon; then every such Presentation shall be void, and such Agreement deemed a Simoniackal Contract, and Her Majesty may present unto such Benefice, Dignity, &c. for that Time only; and the

Review of the Statutes, &c.

9

the Person so corruptly taking or procuring such Benefice, &c. shall be adjudged a disabled Person in Law to have and enjoy the same, and be subject to any Pain, &c. inflicted by the Laws Ecclesiastical, in like manner as if such corrupt Agreement had been made after such Benefice, &c. had become vacant.

And the Person buying the same, is disabled in Law to enjoy it, &c.

Additional Duties on Stamp'd Parchment and Paper.

BY Statute 12 *Annæ* it is enacted, That from the 2d of *August* 1714. for 32 Years, there shall be paid for every Piece of Vellum, Parchment and Paper, on which the Things hereafter mentioned shall be ingrossed or written, (over and above all other Duties) the Rates following, (*viz.*)

To be paid over and above other Duties.

For every Transfer of Stock in any Company, &c. 4 s. 6 d.

Transfer of Stocks.

For any Grant, or Letters Patents under the Great Seal, or Seal of the Dutchy or County Palatine of *Lancaster*, of any Honour, &c. (Commissions of Rebellion in Process excepted:) 40 s.

Letters Patents of any Honour under the Great Seal.

For Pardons (except the general Circuits, and *Newgate* Pardons) or Warrants of Reprieve, or Relaxation from any Pecuniary Fine exceeding 100 l. or from any Corporal Punishment, 40 s.

Pardons and Warrants of Reprieve.

For Grants from Her Majesty of any Sum exceeding 100 l. Passing the Great Seal of *Great Britain* or *Scotland*, or the Privy Seal, not directed to the Great Seal, 40 s.

Grants of her Majesty, of Money.

For

- Grants of Offices.** For Grants of any Offices above 50 *l.* Value *per Annum*, 40 *s.*
- Dispensations of Ecclesiastical Persons.** For any Dispensation for holding two Ecclesiastical Benefices, or both a Dignity and a Benefice; or any Dispensation from the Archbishop of *Canterbury*, or Master of the Faculties, 40 *s.*
- Admittances of Physicians, Attornies, Clerks, &c.** For Admitting of any Fellow of the College of Physicians, or of any Attorney, Clerk, &c. in any Court, (not being an Annual Officer in any Corporation, &c. under 10 *l.* *per Annum* in Salary, Fees, &c.) 40 *s.*
- Appeals from the Court of Admiralty.** For all Appeals from the High-Courts of Admiralty, either in *England* or *Scotland*; Court of Arches, or Prerogative-Court of *Canterbury* or *York*, 40 *s.*
- Institutions and Licences made by Bishops.** For all Institutions or Licences that shall pass the Seal of any Archbishop or Bishop, &c. in *England*, or any Instrument to the same Purpose, made by any Presbytery or Spiritual Power in *Scotland*, (Licences to School-masters and Tutors excepted) 5 *s.*
- Letters of Mart. Beneficial Warrants under the Sign Manual.** For Letters of Mart, 5 *s.*
For every Beneficial Warrant or Order under the Sign-Manual, (except Warrants or Orders for the Service of the Navy, Army and Ordnance) 2 *s.* 6 *d.*
- Indentures, Leases, Bonds, &c. (Bail-Bonds, &c. excepted.)** For any Indenture, Lease, Bond, or any Deed, not otherwise charged, 6 *d.* (except Bail-Bonds, &c. and Indentures for Binding poor Children Apprentices, and such Deeds executed in *Scotland* as are charged with 2 *s.* 3 *d.* by Act 10 *Annae.*)

Nothing

Review of the Statutes, &c.

II

Nothing in this Act to extend to charge any the Matters or Things which by 9 *W.* 3. are exempted.

Things exempted by a former Act, not to be charged.

Commissioners of the Stamps are to manage these Duties, and to imploy Officers under them for that Purpose, and to provide new Stamps to denote these Duties.

Commissioners to provide Stamps.

Where any more than one of the Matters hereby charged shall be ingrossed upon one Piece of Parchment, Vellum, &c. they shall be severally charged.

Two Things in one Piece of Parchment, to be severally charged.

All Vellum, &c. stamp'd in Pursuance of former Acts (before 2 *August* 1714.) to be brought to the Stamp-Office to be marked with the new Stamps; and all Vellum, &c. not then stamped, after the said 2 *August*, to be brought to the Head-Office, and marked with the proper Marks or Stamps provided in pursuance of this and the former Acts, to denote the Duties.

Parchment to be brought to Stamp-Office, and be marked with proper Stamps.

And if any of the said Matters be written on Vellum, &c. not duly stamp'd, there shall be paid to the Queen 5 *l.* and no such Matter shall be available in Law, &c. unless as well the Duty, as the Sum of 5 *l.* be first paid, and a Receipt produced for the same under the Hand of the Receiver-General, &c. and the proper Officers are thereupon to mark such Matter or Thing with the proper Stamps.

Forfeitures for writing on Paper, &c. not duly stamp'd.

Every

Oaths to be
taken by Com-
missioners.

Every Commissioner and Officer of these Duties, to take the Oath mentioned in this Act; which may be administered by any two of the Commissioners, or a Justice of the Peace.

Allowance
for present
Payment of
Duty.

There shall be allowed 6 *l. per Cent.* for Six Months, where the Duty amounts to 100 *l.* for present Payment.

Penalties of
former Acts
continued in
force.

All Powers, Pains of Death, &c. by Act 9 *W. 3. &c.* not hereby alter'd, shall be in full Force, with relation to these Duties, as fully as if the Stamp-Duties hereby charged had been charged by the said Act: And Commissioners for managing these Duties, to be subject to the said Act.

Omission of
paying Du-
ties on taking
Apprentices,
redressed.

Where Masters or Mistresses have omitted paying the Duties payable on taking Clerks and Apprentices, &c. on Payment of such Duties before 1 *Mar.* 1714. and tendring to be stamp'd such Indentures so omitted to be stamp'd; they shall be stamp'd, and shall be good in Law and Equity; and the Clerks or Apprentices shall be capable of Exercising their respective Professions as fully, as if there had been no such Omission, so as the true and full Sums contracted for be written or indorsed thereon in Words at length on such Indentures; and the Masters to be indemnified where no Prosecution has been commenced before 24 *June* 1714.

Interest

Interest of Money, reduced.

BY Statute 12 *Annæ* it is enacted, That no Person upon any Contract made after 29 *Septemb.* 1714. shall take for Loan of Monies, Wares, &c. above 5 *l.* for the Forbearance of 100 *l.* for a Year, and after that Rate for a greater or lesser Sum, or longer or shorter Time: And all Bonds, &c. for Money lent on Usury where there shall be more taken, shall be void; and the Offender shall forfeit treble the Value of the Monies, Wares, &c. so lent.

No more than 5 per Cent. to be taken on Forfeiture of the Security, and treble the Value of Money lent.

No Scriveners, Brokers, &c. after 29 *Sept.* 1714. are to take more than 5 *s.* for 100 *l.* for a Year for Brokage, Soliciting or Procuring the Loan, or Forbearing any Sums of Money, or above 12 *d.* besides the Stamp-Duties, for Making or Renewing of the Bond, &c. on Forfeiture of 20 *l.* with Costs of Suit, and Half a Year's Imprisonment; One Moiety of the Forfeiture to the Queen, the other to the Informer.

Scriveners, &c. not to take for Procuration, &c. above 5 *s.* per *Ann.* for 100 *l.*

Forfeiture.

Vagrants, &c.

BY Statute 12 *Annæ* it is enacted, That all Persons pretending to be Patent-Gatherers, or Collectors for Prisons, Gaols or Hospitals, and wandring abroad for that Purpose; All Fencers, Bear-Wards, Common Players of Interludes, Minstrels, Jugglers; All Persons pretending to be Gypsies,

What Persons shall be deemed Vagrants.

or

or wandring in the Habit or Form of counterfeit *Egyptians*; Or pretending Skill in Physiognomy, Palmestry, or like Crafty Science; or pretending to tell Fortunes, or like Fantastical Imaginations; or using any Subtil Craft, or Unlawful Games or Plays; All Persons able in Body who run away, and leave their Wives or Children to the Parish, and not having wherewith otherwise to maintain themselves, use Loitering, and refuse to work for the usual and common Wages; and all other idle Persons wandring abroad and begging, (except Soldiers, Mariners, or Sea-faring Men, licensed by some Testimonial or Writing under the Hand and Seal of some Justice of Peace, setting down the Time and Place of their Landing, and the Place to which they are to pass, and limiting the Time for their Passage, while they continue in the direct Way to the Place to which they are to pass, and during the Time so limited;) shall be deemed Rogues and Vagabonds.

Exception.

Constables to apprehend Vagrants, & carry them before a Justice.

Other Persons to apprehend Vagrants, being charged by a Justice:

After 1 *August* 1714. if any Person by this Act declared to be a Vagabond, shall be found Wandring and Begging, &c. in any Parish, the Constable, &c. may apprehend such Person, and convey him or her to some Justice near the Place: And if the Constable, &c. shall not use his best Endeavour to apprehend such Vagabond, it shall be deemed a Neglect of Duty: And if any other Inhabitant, being charged by the Justice, &c. shall refuse to use his Endeavour to apprehend and deliver to the Constable, or to carry

carry before some Justice any such Vagabond, and be found guilty on Oath before the Justices, he shall forfeit 10 s. to the Poor of the Parish: And if any Person shall apprehend such a Vagabond, and bring him before some Justice, the Justice may reward such Person, by ordering any Constable, &c. where any Rogue or Vagabond was found begging, and pass'd unapprehended, to pay 2 s. to the Person so apprehending him; which if the Constable refuse to pay, such Justice may by Warrant levy 20 s. by Distress and Sale of such Constable's Goods, and thereout allow the said 2 s. and such other Recompence as he shall think fit.

Or be liable to a Forfeiture.

Reward to Persons apprehending Vagrants.

Any Two or more of the Justices, some convenient Time before their Quarter-Sessions, shall meet in their respective Divisions; and by their Warrant command the Constables of every Hundred, &c. (who shall be assisted with sufficient Men) to make a general privy Search in one Night, through their several Limits, for apprehending such Vagabonds, and to cause such as they find, to be brought before any Justice of the same Division.

Two Justices to order a privy Search to be made for Vagrants one Night before Quarter-Sessions.

Persons so apprehended shall be brought before any two Justices of the Peace, who are to examine and inform themselves, as well by the Oath and Examination of the Persons apprehended, as of others, or by any other Means, of the Condition of the Person, and of the Place of his Abode, or Birth,

Persons apprehended to be examin'd on Oath.

Examination
to be trans-
mitted to the
Quarter-Ses-
sions.

Persons to be
sent to the
Place of their
legal Settle-
ment, or Place
of Birth.

And if under
the Age of
14, to their
Parents; and
if that not
known, to the
Place last
found beg-
ging unpun-
ish'd.

Any Person
found beg-
ging, having
a Settlement,
to be whipt.

Birth, and cause it to be put down in Writing, and signed by the Persons so examined, and transmitted to the next Quarter-Sessions, there to be filed and kept on Record: And if it appear such Person hath any legal Settlement, he shall be sent thither, in such manner as by the Laws other Persons likely to be chargeable to the Parish are be sent; and if it cannot be found that he hath gained a legal Settlement since his Birth, then he shall be sent by a Pass (directed to the Constable, &c. where apprehended, taking notice where, and for what Cause he was apprehended, and whither, and in what Time he is to pass) to the Place of his Abode; or if he be under the Age of 14 Years, and have Father or Mother, to the Place of their Abode; but if that cannot be known, then to the Parish or Town where he was last found begging, &c. and passed unapprehended, and there be delivered to the Constable, &c. the which Pass shall be in the Form mentioned in this Act.

If any Person who hath obtained a legal Settlement, be found wandring and begging, &c. he may by such Justices, before being sent by such Pass, be openly whipped until his or her Body be bloody, or be sent to the House of Correction, and kept at hard Labour, at the Direction of such Justice, and shall afterwards be sent away by such Pass, which the Constable, &c. shall see duly executed.

All

All such Persons apprehended on a general privy Search, who on Examination shall appear to have committed Acts of Vagrancy, and to have no fix'd Abode or Employment in the Place where apprehended, although they may have acquired a legal Settlement subsequent to their Birth, and be sent to the Place of such their Settlement; yet the Charges shall be born in the same Manner as conveying other Rogues and Vagabonds is to be born; and the Justices, if they shall see Cause to judge any such Vagabond to be dangerous to the People where taken, may cause him to be committed to the House of Correction, or the County Gaol, there to remain and be kept at hard Labour, till the next Quarter-Sessions; and if the major Part of the Justices shall adjudge such Person a dangerous and incorrigible Rogue, they shall cause him to be whipt three Market-days successively, and kept to hard Labour during such Time as they shall think meet; and if he shall before the Time expired, break out and make his Escape, he shall for such Offence be guilty of Felony.

Charge of conveying Vagrants, to be born as Charge of other Vagabonds.

Dangerous Vagabonds to be committed to House of Correction, or County Gaol:

And to be whipt 3 Market-days, and kept to hard Labour.

Breaking Prison Felony.

Where any Person shall be brought before any Justice as a Vagabond, such Justice shall not make a Pass for conveying him to the Place of his Birth, if it shall appear such Person have any legal Settlement, on Pain of forfeiting 5 l. for every such Offence.

Justices not to make a Pass to the Place of Birth, if the Person have any Settlement. Forfeiture.

B

Any

All

Person refusing to be examined, or giving false Oath, to be deem'd an incorrigible Rogue.

Any Person so apprehended, who shall refuse to be examined upon Oath touching the Place of Birth or last Settlement, or give a false or unsatisfactory Account thereof, shall be deemed as an incorrigible Rogue, and may be punished as such; of which Punishment the Justice shall inform him during his Examination.

Justices to deliver a Certificate to the Constable, ascertaining how the Person is to be conveyed.

The Justices shall at the same Time with such Pass, cause to be delivered to the Constable, &c. a Certificate ascertaining how the Person is to be conveyed by Horse, Cart, or on Foot, and in what Time, and what Allowance such Officer is to have for conveying such Person to the Place he is to pass him, in the Form directed in the Act.

Constable, how to convey Vagrants.

The Constable, &c. who shall receive such Pass and Certificate, shall convey the Persons named therein, in such Manner and Time, as by the Pass directed, the next direct Way to the Place whither sent, if such Place be in the same County, Division, &c. keeping separate Quarter-Sessions; or if not in the same County, &c. then to the first Town of the County, &c. named in such Pass, and deliver them to the Constable, &c. with the Pass, taking a Receipt of such Delivery upon the Certificate under the Hand of such Constable, &c. who is to receive the same, and sign such Receipt, and apply to a Justice of his proper County, &c. who shall cause such

Other Constables to receive them, and give Receipts.

Rogue

Rogue
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Rogue to be stript and openly whipt, or sent to the House of Correction, and there kept at hard Labour for two or three Days, and after conveyed with the former Pass, and a new Order and Certificate in like Form as before, *mutatis mutandis*, to be by the said Justice made, and so from one County, &c. to another, until brought to the Place whither first ordered to be sent, and there delivered to the Constable of the Place, who is to receive him with the Pass, and sign a Receipt of such Delivery.

Punishment.

Pass continued from one County to another.

No Constable shall be obliged to receive any Persons by any Pass, unless it appear by the said Pass, that the Persons so ordered to be conveyed have been whipt, or sent to the House of Correction, in the County, City, &c. through which they last passed, (except Women with Child, Soldiers wanting Subsistence, having Certificates, or such Persons as the Justices shall judge not able to undergo such Punishment) which shall be certified in the said Pass.

Constable not obliged to receive Vagrants, unless they have been punish'd at the Place they last came from.

Exception.

The Justices at their Quarter-Sessions shall appoint what Rates or Allowances per Mile, or otherwise, shall be made for Passing or Maintaining Vagrants, and make Orders, &c. for the more regular Proceeding therein in their Limits, which shall be observed by all other Justices, Constables, &c. in the same Limits.

Justices at Quarter-Sessions to appoint Allowances for passing Vagrants.

Justices at
Quarter-Ses-
sions may or-
der Money to
be raised for
Passes as Mo-
nies for Coun-
ty Gaols,
Bridges, &c.

The Justices at their Quarter-Sessions may, by such Ways and Means as Monies for County Gaols or Bridges may be raised, cause such Sums of Money to be raised within their respective Precincts for the passing and conveying Vagabonds, as shall be necessary; to be Quarterly paid to the chief Constables of each Division, in such manner as that such Constables may have a Quarterly Payment before-hand, who shall account twice a Year or oftner for the same with the proper Treasurers.

Chief Consta-
ble to pay
Petty Consta-
bles Rates
certified by
the Justices
for conveying
Vagabonds.

Any Petty Constables, &c. that shall bring to the Chief Constable any Certificate given him by any Justice, ascertaining how, and for what Rates he shall be required to convey any Vagabonds, together with a Receipt from the Constable to whom the Person was delivered, the Chief Constable shall pay him the Rates ascertained in such Certificate, and no more, taking his Receipt; which the Chief Constable shall discount with the Treasurers of the County.

Petty Consta-
ble counter-
feiting Certi-
ficate, to for-
feit 20 l.

And if such Petty Constable, &c. shall counterfeit such Certificate, &c. or alter any Sums, and not convey the Person thereby intended to be conveyed, he shall forfeit 20 l. above the Sum so fraudulently taken; one Moiety to the Poor of the Parish, the other to the Informer.

The Justices may examine any Constable, &c. on Oath, whether he did convey the Persons whom he was ordered to convey, by any Pass, and to whom delivered; and on his refusing to be sworn, or if it shall appear he has neglected his Duty, he shall lose the Allowance.

Constable to be examin'd on Oath, or lose the Allowance.

The Parish or Place to which any Vagabond shall be conveyed by Pass, shall employ in Work, or place in some Work-house or Alms-house, the Persons so conveyed to them, till they betake themselves to Service; and if they refuse to work, the Overseers may cause such Person to be carried before some Justice in order to be sent to the House of Correction, to be kept to hard Labour: And in case any Parish shall not employ, but permit such Person to escape or wander again, and the said Person shall be after taken up begging, &c. in any other County or Parish, any Justice where such Vagabond shall again be apprehended, may compute what Charge the County shall be put to by Passing, &c. such Vagabond; and the Money ascertained, the Justice may by Warrant order to be levied upon any of the Constables, &c. Goods so in default; and if the Parish in default be in another County, then the Warrant ascertaining such Charge, may be brought to some Justice of the Peace of the same County, who shall cause the same to be levied and paid for the Use of the County where such Charges were ex-

Parish to which a Vagabond is conveyed, to set him to Work until he go to Service.

Parish not employing, but permitting such Person to escape, to pay Charge of Re-conveyance.

Constable
Paying such
Charge, to be
allow'd the
same in his
Rates.

Persons found
again beg-
ging, to be
sent to House
of Correction
until Quarter
Sessions.

Vagrants ha-
ving no Set-
tlement since
their Birth, to
be placed Ap-
prentices to
Persons wil-
ling to re-
ceive them
here, or in the
Plantations.

pended: And the Constable on whom the Monies were so levied, may put the same in his Rates, and shall be allowed it by the Inhabitants; and the Justices of the County whither such Vagabond shall be conveyed, may at their Quarter-Sessions, to which such Pass is to be transmitted, inquire of the Default of any Officer or Person of any Parish to whom such Vagabond shall be brought, in permitting his Escape, and punish the Person offending according to the Merit of his Offence: And after, if such Person shall be found wandring again, and begging, &c. the Justices on Proof thereof, shall send such Person to the House of Correction, to be kept at hard Labour till the next Quarter-Sessions; and such Person not giving Security for his Behaviour for one Year, they may adjudge him a dangerous and incorrigible Rogue, and order him to be punished accordingly.

Persons apprehended and brought before a Justice, and found to have no Settlement since their Birth, and to have committed any of the Acts of Vagrancy in this Act mentioned, or to have used Begging for two Years last past, although they had formerly a Settlement, or to be a Rogue, &c. the Justices, instead of punishing or passing them away, may commit such Persons to the Custody and Power of him or them who procured such Apprehension; and on their Refusal, to the Power of any other Persons,

Persons, Bodies Politick or Corporate, willing to receive them as their Apprentices for Seven Years, and no longer; who may detain, keep, imploy, and set to Work, either in this Realm, or in any Her Majesty's Plantations, or *British* Factories beyond Seas, the Persons so committed to them, during the Seven Years.

But no such Person shall be transported till his Master shall become bound by Recognizance, in the Penalty of 40 *l.* that the Person shall be sent to, and imployed in some of Her Majesty's Plantations, or *British* Factories, and supplied with Necessaries convenient, and at the End of Seven Years discharged, and in the mean time not to be sold to any Alien: Which Recognizance any Justice may take and transmit to the next Quarter-Sessions, to be kept on Record.

Masters to enter into a Recognizance not to send such Apprentice out of *British* Plantations, or sell them; and at the End of 7 Years to discharge them.

Persons aggriev'd may appeal to the next Quarter-Sessions of the County wherein such Order was made, and shall not be sent away till such Quarter-Sessions, whose Determination shall be final; but may be kept in the House of Correction if the Justices think fit.

Persons aggriev'd, to appeal to next Quarter Sessions.

Where any loose, idle, and disorderly Persons, Blind, Lame, or pretending to be so, or with distorted Limbs, or pretending some Bodily Infirmary, shall be found Begging in the Streets, &c. Complaint being

Constables to whip idle Persons, Lame, Blind, &c. begging in the Streets.

made by two or more Inhabitants of the Parish, Town, &c. to the Constable, &c. such Constable shall with Speed cause the said Persons to be removed; and if they refuse to be removed, or being removed, shall offend a second Time, such Constable, &c. shall cause them to be stripp'd naked from the Shoulders to the Waste, and whipp'd till their Bodies be bloody: And if such Constable shall neglect to cause the same to be done, upon Oath by two or more Witnesses within 24 Hours before a Justice, he shall forfeit to s. to the Poor of the Parish, &c. by Warrant of the Justices, &c. to be levied by Distress, &c.

Forfeiture.

Lunatick found wandring, to be secur'd by Order of 2 Justices:

And sent to the Place of his Settlement as Vagrants.

Any two Justices, where any Lunatick shall be found wandring, by Warrant under their Hands and Seals to the Constables, may cause such Person to be apprehended, and kept lock'd up in such secure Place as such Justices shall, under their Hands and Seals, appoint; and (if they find it necessary) to be there chained, if the last Settlement of such Person be in the said County; and if such Settlement shall not be there, then he shall be sent to the Place of his last legal Settlement, (as Vagrants by this Act are directed to be sent) whipping excepted, and kept lock'd up; and the Charges of maintaining such Person during such Restraint, (which shall be only for such Time as such Lunacy shall continue) shall be paid by Order of two or more Justices, out of the Estate of such Person, if such Person

Person have any, over and above what shall maintain his Wife and Children; and if he hath not such Estate, then it shall be paid by such Ways and Means as the Poor of such Parish, &c. are to be provided for.

This Act shall not extend to abridge the Queen's Prerogative, or Authority of the Lord Chancellor, &c. touching or concerning the Premises.

This Act not to abridge Queen's Prerogative, &c.

If any Master of a Ship shall bring into this Realm from Ireland, the Isle of Man, the Isles of Jersey, Guernsey, or Scilly, or any of the Foreign Plantations, any Rogue, &c. or any Person likely to live by Begging, being a Native of any the said Islands or Plantations, and the Persons so brought shall be apprehended wandring and begging, &c. such Commander shall forfeit 5 l. for every such Rogue, &c. so brought over, over and above such Sum as shall be necessary to defray the Charges any Constable, &c. shall be put to by apprehending and re-conveying back such Persons: And the Constable, &c. where any such Persons shall be found wandring, &c. may cause them to be apprehended, and openly whipp'd, and after put on Board any Ship to be re-conveyed, and set on Shore in the same Island from whence brought, paying the Passage back of such Persons at such Rate per Head as the Justices at Quarter-Sessions shall appoint: And if the Constable on Oath make it appear what Expence he hath been put to

Rogues and Beggars imported by Masters of Ships from Ireland, &c. such Master shall forfeit 5 l. for each.

Beggars imported, to be whipt, and put on Ship-board, to be sent back to the Place from whence brought. Justices in Quarter-Sessions to appoint so much a Head to be paid for their Passage.

ON

Ship and
Goods liable
to Distress for
Forfeitures
and Expens-
ces.

By Order of
Judges B. R.
the Ship or
Owners may
be arrested.

Master grie-
ved may tra-
verse on gi-
ving Security
against Char-
ges.

Masters of
Ships obliged
to take on
Board Va-
grants by Or-
der of Justi-
ces.

on such Occasion, the Justices may direct Payment thereof, as also of the Penalty of 5 *l.* and on the Master's Refusal or Neglect to pay the same, may grant their Warrant to levy the same by Distress and Sale of the said Ship, or any Goods in her, whilst remaining in the Jurisdiction of such Justices; and if gone away, the Order may be removed by *Certiorari* into the Court of *Queen's-Bench*, and their filed on Record; and being so filed, the Judges are to direct Process for staying and arresting the said Ship until the Monies mentioned in such Order, with Charges, shall be fully satisfied, or to award Process for levying the same by *Capias*, *Fieri Facias*, or *Elegit*, against the Master or Owners of the said Ship, as the Court shall think most proper.

The Master, &c. on shewing any probable Ground of Grievance by such Order, may traverse the same, giving Security in the Penalty of 50 *l.* to satisfy the Charges of such Traverse, if determined against him.

All Masters of Ships bound for *Ireland*, &c. shall, upon Warrant to them directed by a Justice of the County or Place where such Ship shall lie, take on Board such Vagrants as shall be named in the said Warrant, and convey them to such Place in *Ireland*, &c. as such Ship shall be bound to, or arrive at; and the Constable, &c. who serves him with such Warrant, shall pay him such Rate *per Head*

Head as the Justices at their Quarter-Sessions shall appoint; and such Master shall, on the Back of the said Warrant, sign a Receipt for the Money so paid, and also for the Vagrants delivered; which Warrant so indorsed, shall be produced to the Justice who signed the same, and on his Allowance thereof, the Money shall be repaid by the County, as by this Act the Money is to be paid for conveying Vagrants; and every Master refusing to receive on Board, or transport such Vagrants, or indorse and sign such Receipt, shall forfeit 5 *l.* to the Poor of the Parish, to be levied by Distress or Sale of the Ship, &c. by Warrant of any Justice for the County.

And such Masters to sign Receipts for the Vagrants, and Money paid for Passage.

Money repaid by the County, when allow'd by Justices.

Masters of Ships refusing to receive such Vagrants forfeits 5 *l.*

Any Constable, &c. who shall fail of his Duty in apprehending Rogues, &c. or any Person who shall hinder the Execution of this Act, or rescue any Person apprehended, or be aiding in their Escape, and be convicted thereof, shall forfeit 20 *s.* to the Poor of the Parish, to be levied by Distress, &c.

Constable neglecting his Duty, or others hindering the Execution of this Act, shall forfeit 20 *s.*

The Act 39 *Eliz.* for punishing Rogues, Vagabonds, &c. and another Act, 1 *Jac.* 1. for the Continuance and Explanation of the same Statute, and so much of another Act made 7 *Jac.* 1. for the Execution of divers Laws and Statutes heretofore made against Rogues, Vagabonds, &c. as relates to the privy Search thereby directed to be made, shall be, and are hereby repealed.

Acts repealed.

This

This Act not
to affect the
Liberty of the
Family of the
Duttons in the
County Pala-
tine of Che-
ster.

This Act shall not extend to disinheret,
prejudice, or hinder the Heirs or Assigns of
John Dutton, late of *Dutton* in the County of
Chester Esq; deceas'd, their Heirs or Assigns,
concerning any Liberty, &c. which they, or
their Heirs or Assigns, now lawfully use, &c.
within the County Palatine of *Chester*, and
the County of the City of *Chester*, by reason
of any ancient Charters, or by Prescription,
or lawful Usage, or Title whatsoever.

F I N I S.



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